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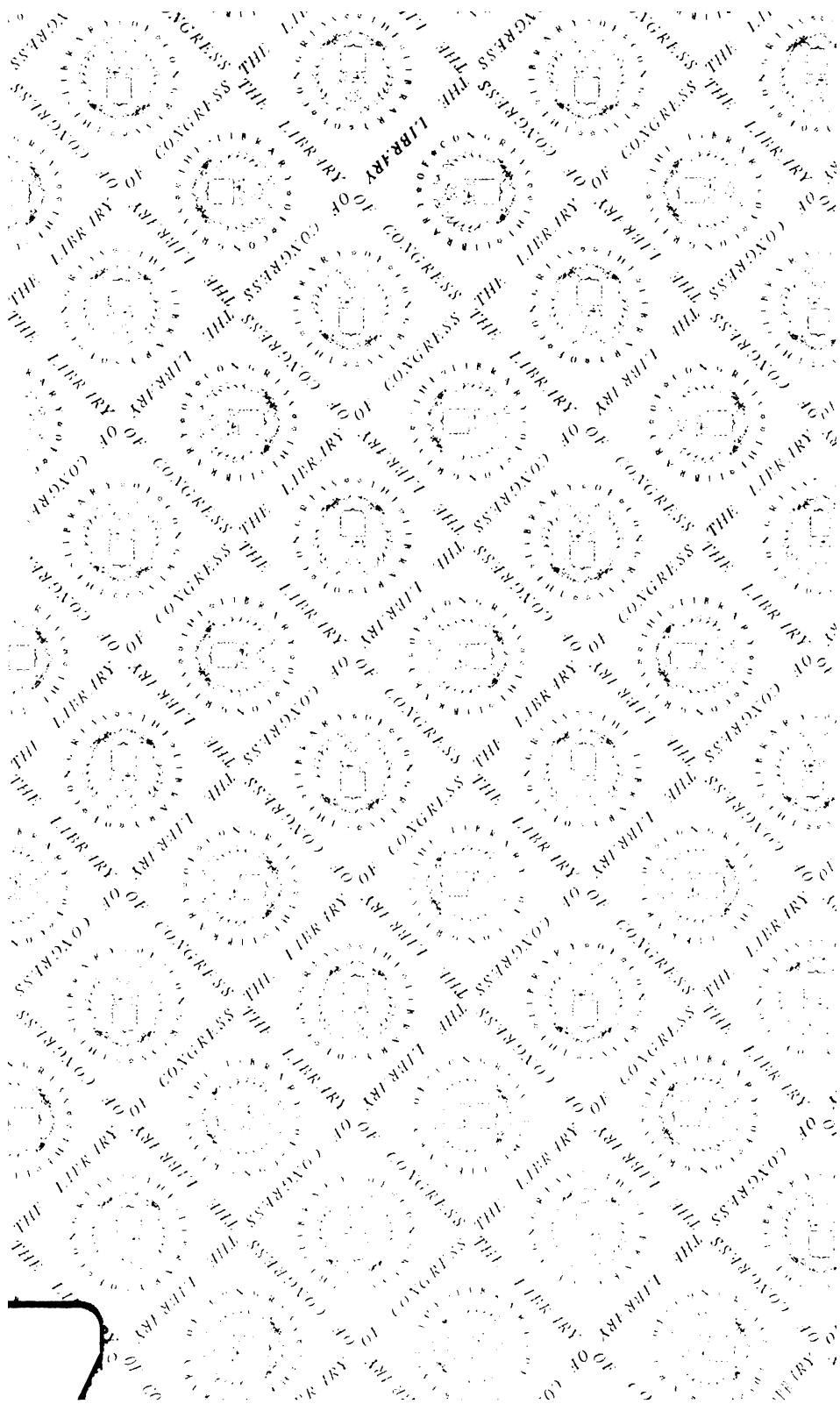
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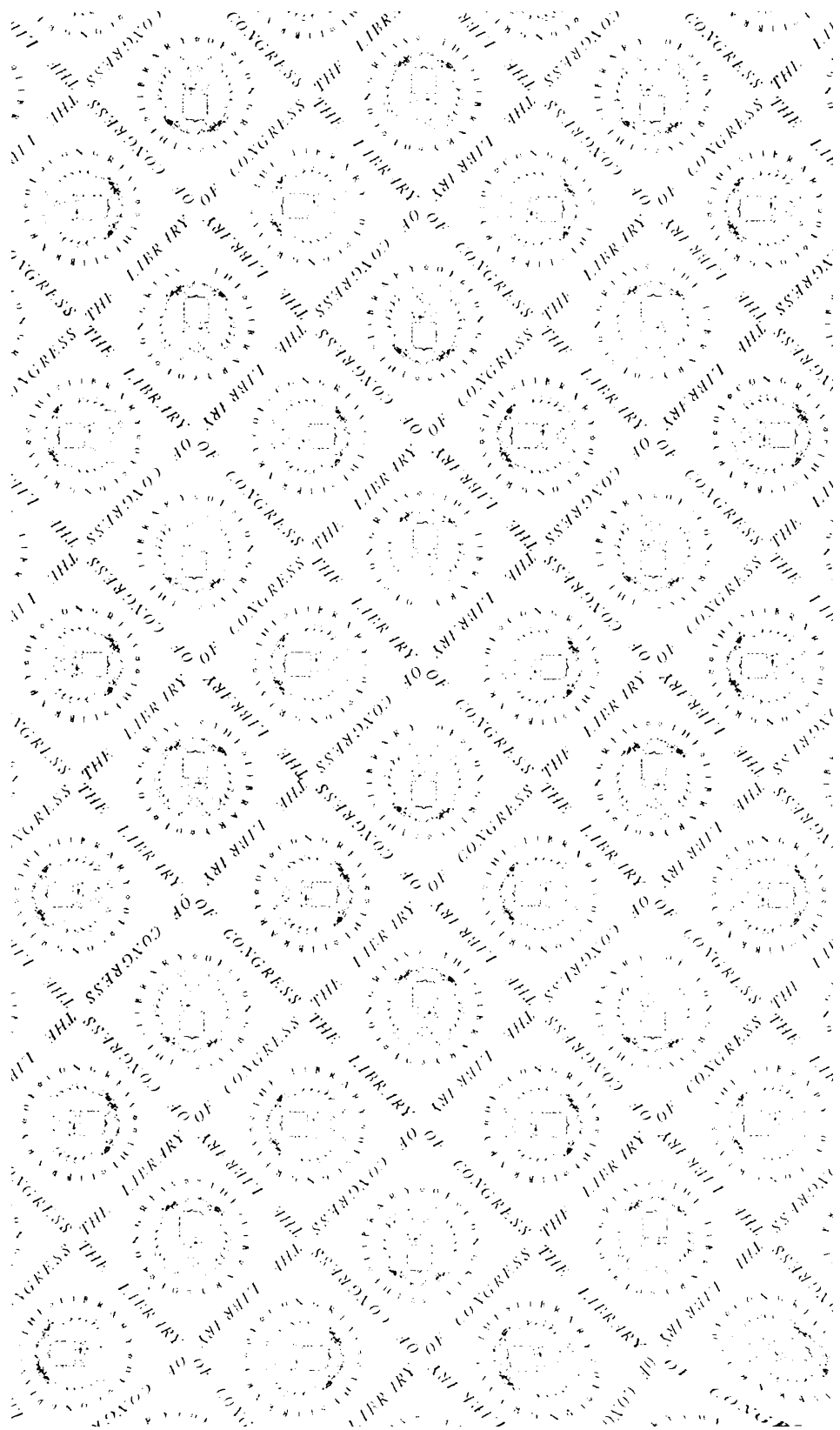
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HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES,

59TH CONGRESS, 1ST SESSION,

IN RELATION TO

ANTI-INJUNCTION AND RESTRAINING ORDERS.

MEMBERS OF COMMITTEE:

JOHN J. JENKINS, WISCONSIN, *Chairman*.
RICHARD WAYNE PARKER, NEW JERSEY.
DE ALVA S. ALEXANDER, NEW YORK.
CHARLES E. LITTLEFIELD, MAINE.
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JOHN S. LITTLE, ARKANSAS.
WILLIAM G. BRANTLEY, GEORGIA.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

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ANTI-INJUNCTION AND RESTRAINING ORDERS.

[H. R. 4445, Fifty-ninth Congress, first session.]

A BILL to limit the meaning of the word "conspiracy," and the use of injunctions and restraining orders in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the District of Columbia or in any Territory of the United States, or between employers and employees who may be engaged in trade or commerce between the several States, or between any Territory and another, or between any Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy for which punishment is now provided by any act of Congress, but such act of Congress shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained.

[H. R. 9822, Fifty-ninth Congress, first session.]

A BILL to regulate the granting of restraining orders in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in cases involving or growing out of labor disputes neither an injunction nor a temporary restraining order shall be granted except upon due notice to the opposite party by the court in term, or by a judge thereof in vacation, after hearing, which may be ex parte if the adverse party does not appear at the time and place ordered: *Provided,* That nothing herein contained shall be held to authorize the issuing of a restraining order or an injunction in any case in which the same is not authorized by existing law.

[H. R. 17975, Fifty-ninth Congress, first session.]

A BILL in relation to contempts of court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That contempts of court committed during the sitting of the court, or of a judge at chambers, in its or his presence or so near thereto as to obstruct the administration of justice, are direct contempts. All other are indirect contempts.

Sec. 2. That a direct contempt may be punished summarily without written accusation against the person arraigned, but if the court shall adjudge him guilty thereof, a judgment shall be entered of record in which shall be specified the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto and the sentence of the court thereon.

Sec. 3. That upon the return of an officer on process or an affidavit duly filed, showing any person guilty of indirect contempt, a writ of attachment or other lawful process may issue and such person be arrested and brought before the court; and thereupon a written accusation, setting forth clearly and succinctly the facts alleged to constitute such contempt, shall be filed and the accused required to answer the same, by an order which shall fix the time therefor, and also the time and place for hearing the matter; and the court may, on proper showing, extend the time so as to give the accused a reasonable opportunity to purge himself of such contempt. After the answer of the accused, or if he refuse or fail to answer, the court may proceed at the time so fixed to hear and determine such accusation upon such testimony as shall be produced. If the accused answer, the trial shall proceed upon testimony produced as in criminal cases, and the accused shall be entitled to be confronted with the witnesses against him; but such trial shall be by the court, or, upon application of the accused, a trial by jury shall be had as in any criminal case. If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment.

Sec. 4. That the testimony taken on the trial of any accusation of indirect contempt may be preserved by bill of exceptions, and any judgment of conviction therefor may be reviewed upon direct appeal to, or by writ of error from, the Supreme Court, and affirmed, reversed, or modified, as justice may require. Upon allowance of an appeal or writ of error, execution of the judgment shall be stayed, upon the giving of such bond as may be required by the court or a judge thereof, or by any justice of the Supreme Court.

Sec. 5. That the provisions of this act shall apply to all proceedings for contempt in all courts of the United States except the Supreme Court.

[H. R. 17976, Fifty-ninth Congress, first session.]

A BILL in relation to granting restraining orders and injunctions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no writ of injunction or temporary restraining order shall be granted in any case without reasonable previous notice to the adverse party, or his attorney, of the time and place of moving for the same: *Provided,* That nothing herein contained shall be held to authorize the issuance of any injunction or restraining order not now authorized by law.

[H. R. 18171, Fifty-ninth Congress, first session.]

A BILL To regulate the issuance of restraining orders and injunctions and procedure thereon, and to limit the meaning of "conspiracy" in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no restraining order or injunction shall be granted by any court of the United States, or a judge, or by the judges thereof, in any case between an employer and an employee, or between employers and employees, or between employers, or between employees, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers, or involving or growing out of a dispute concerning terms or conditions of employment, except upon at least five days' personal notice to the person or persons against whom such restraining order or injunction is applied for, definitely and specifically naming and describing each and every person and act sought to be restrained or enjoined; nor shall any such order or injunction be granted unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant, or by his, her,

or its agent or attorney. And for the purposes of this act no mere right to continue the relation of employer and employee, or to assume or create such relation, with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property, or as constituting a property right.

SEC. 2. That in cases arising in the courts of the United States or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, shall constitute a conspiracy or other criminal offense or be punished or prosecuted as such, nor shall the carrying out of any such agreement be restrained or enjoined unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual, nor shall the carrying out of any such agreement be restrained or enjoined unless such act or thing when done would be of the character described in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

[H. R. 18446, Fifty-ninth Congress, first session.]

A BILL to regulate the issuance of restraining orders and injunctions and procedure thereon and to limit the meaning of "conspiracy" in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and an employee, or between employers and employees, or between employees, or between persons, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers, or involving or growing out of a dispute concerning terms or conditions of employment unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant or by his, her, or its agent or attorney. And for the purposes of this act no mere right to continue the relation of employer and employee or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

SEC. 2. That in cases arising in the courts of the United States or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute shall constitute a conspiracy or other criminal offense or be punished or prosecuted as such unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual, nor shall the entering into or the carrying out of any such agreement be restrained or enjoined unless such act or thing agreed to be done would be subject to be restrained or enjoined under the provisions, limitations, and definition contained in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

[H. R. 18752, Fifty-ninth Congress, first session.]

A BILL to regulate the issuance of restraining orders and injunctions and procedure thereon and to limit the meaning of "conspiracy" in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges

thereof, in any case between an employer and an employee, or between employers and employees, or between employees, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers, or involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant or by his, her, or its agent or attorney. And for the purposes of this act no right to continue the relation of employer and employee or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

SEC. 2. That in cases arising in the courts of the United States or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute shall constitute a conspiracy or other criminal offense or be punished or prosecuted as such unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual, nor shall the entering into or the carrying out of any such agreement be restrained or enjoined unless such act or thing agreed to be done would be subject to be restrained or enjoined under the provisions, limitations, and definition contained in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, March 14, 1906.

The committee met at 11 o'clock a. m., Hon. John J. Jenkins (chairman) in the chair.

The CHAIRMAN. Gentlemen, the committee will be in order. Mr. Fuller will take charge of the gentlemen who are to speak in favor of the bill, and Mr. Parsons will look after those who are in opposition to it, and I believe Mr. Fuller desires to speak now.

STATEMENT OF MR. H. R. FULLER, LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN, ORDER OF RAILWAY CONDUCTORS, AND BROTHERHOOD OF RAILROAD TRAINMEN.

MR. FULLER. Mr. Chairman and members of the committee, I will speak with reference to House bill 9328. It is entitled "A bill to regulate the granting of restraining orders in certain cases," and reads:

That in cases involving or growing out of labor disputes neither an injunction nor a temporary restraining order shall be granted except upon due notice to the opposite party by the court in term, or by a judge thereof in vacation, after hearing, which may be ex parte, if the adverse party does not appear at the time and place ordered: *Provided*, That nothing herein contained shall be held to authorize the issuing of a restraining order or an injunction in any case in which the same is not authorized by existing law.

The question of Congressional legislation to limit or define the power of Federal courts in issuing injunctions in labor disputes has within the last ten years been before Congress in three different forms.

First, in the form of a bill which divided contempts of court into two different classes—direct and indirect. In the indirect class was included what might be called an injunction or order of the court. Those accused of contempt who came in the indirect class were to be permitted to have a trial by jury. The second form in which it has been before Congress was in a bill known as the Hoar-Grosvenor bill, which made certain acts innocent; took certain acts which were lawful for one to do out of conspiracies when done by more than one. In other words, it made legal those things which are legal for one to do at the present time if done by several in a trade dispute. Then that was followed by the provision that those acts which are declared innocent should not be restrained or enjoined.

The third form of legislation was providing that the adverse party should have an opportunity to be heard before an order could be granted, which is the bill of which I speak.

I believe that the causes which led up to the introduction of these various measures are too well known to the members of this committee to require at this time a general discussion of the main question. Therefore I will endeavor to confine myself wholly to the bill which I have read. I think it is sufficient to say at this time that some of our Federal judges have abused the injunctive power to the extent of calling forth condemnation of their actions by committees of Congress. The Senate Committee on the Judiciary in the Fifty-fourth Congress, a short time after the labor injunctions began to be used, was instructed by the Senate to investigate the whole question of contempts of court and to see whether or not the citizens needed further protection. The Senate committee took that question up, and they reported the bill which I first spoke of, which divided contempts into two different classes and permitted jury trials in cases of indirect contempt. That bill passed the Senate. It came to the House and was referred to the Judiciary Committee. It was amended materially, so much so that the friends of the bill did not think it proper to further advocate it, and nothing was done with it.

The next measure, the Hoar-Grosvenor bill, was introduced in the Fifty-sixth Congress. It was first introduced by Mr. Ridgely, of Kansas. It was reported from this committee with several amendments, amendments which the friends of the bill thought were sufficient to destroy its efficiency, and they did not press the matter. It was then introduced in the House by General Grosvenor and in the Senate by Senator Hoar, of Massachusetts. It was reported from the Senate committee favorably without amendment. It was reported from this committee without amendment and passed the House. After the Senate bill had been reported the committee reconsidered it and reported a substitute for it, which we were not satisfied with. Then when the House bill came over to the Senate an amendment was put upon it, much less objectionable than the substitute, but, anyhow, we felt that we did not care about the bill with that amendment on it, and nothing further was done in that Congress. The same bill was introduced again in the last Congress, and it remained in this committee.

Now, with regard to the Gilbert bill, which I have just read, we do not think that this is a complete remedy for the abuse of the injunctive power by some of our judges, but we do believe it is a step

in the right direction, and we feel that so long as we can get legislation, if it is along the right lines, we should accept it. It has been said by some of the critics of this bill that it is unconstitutional because it interferes with the judicial powers of the courts; that the powers of the courts can not be interfered with by Congress. Lawyers have come before this committee and made that argument with regard to the other bills that have been before it in past Congresses.

Mr. Chairman, I can not see how any lawyer who has looked into the decisions of the Supreme Court of the United States can say that Congress can not legislate as to this question and restrict the power of the courts as to contempts or injunctions. Congress has already exercised this control in section 5 of the judiciary act of March 3, 1793. That section reads:

Nor shall a writ of injunction be granted in any case without reasonable previous notice to the adverse party, or his attorney, of the time and place of moving the same.

That law stood until 1872—for seventy-nine years. The Federal courts of this country could not issue an order of any kind without due notice to the adverse party. We are told in the decision in *Yuengling v. Johnson* (30 Fed. Cas., p. 896) that—

While the clause of the act of 1793 in question was in force there were many decisions of the Supreme and circuit courts of the United States enforcing it, and these rulings of the courts have gone into the digests and text-books in use by bar.

In the case of *The State of New York v. The State of Connecticut* (4 Dallas, 1) the Supreme Court of the United States, through Chief Justice Ellsworth, held that—

The prohibition contained in the statute that writs of injunction shall not be granted without reasonable notice to the adverse party, or his attorney, extends to the Supreme Court or the circuit court as well as to those that may be granted by a single judge.

In *The Assessors v. Osbornes* (9 Wallace, pp. 567-575), Justice Clifford said:

Circuit courts are courts of special jurisdiction, and therefore they can not take jurisdiction of any case, either civil or criminal, where they are not authorized to do so by an act of Congress.

Jurisdiction in such cases was conferred by an act of Congress, and when that act of Congress was repealed the power to exercise such jurisdiction was withdrawn, and inasmuch as the repealing act contained no saving clause, all pending actions fell, as the jurisdiction depended entirely upon the act of Congress.

In *Turner etc., v. The President, etc., of the Bank of North America*, defendants (volume 4, Dallas), Justice Chase said (p. 10):

The motion has frequently been entertained that the Federal courts derive their judicial power immediately from the Constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound and it would, perhaps, be inexpedient to enlarge the jurisdiction of the Federal courts to every subject, in every form, which the Constitution might warrant.

In *Cary v. Curtis* (Vol. III, Howard, p. 245) Justice Daniel said:

Secondly, in the doctrine so often ruled in this court that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances applicable exclusively to this court) dependent for its

distribution and organization and for the modes of its exercise entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. To deny this position would be to elevate the judicial over the legislative branch of the Government, and to give to the former powers limited by its own discretion merely.

By act (1 Stat., 83) Congress declared that the courts of the United States "shall have power * * * to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any case or hearing before the same." But this power was later limited by the act of March 2, 1831 (4 Stat., 447, Rev. Stat., sec. 725), as follows:

That such power to punish for contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of said courts.

In *ex parte Robinson* (19 Wall., 510) the United States Supreme Court, through Justice Field, held:

The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders, and writs of the courts, and, consequently, to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831. The act in terms applies to all courts. Whether it can be held to limit the authority of the Supreme Court, which derives its existence and power from the Constitution, may perhaps be a matter of doubt. But that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted.

In a later decision of the Supreme Court, in *Bassette v. W. B. Conkey Company* (U. S., 194, p. 324), delivered by Justice Brewer, this was reaffirmed, and in this decision the court further said:

It is true Congress, by statute (1 Stat., 83), declared that the courts of the United States "shall have power * * * to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any case or hearing before the same," and this general power was limited by the act of March 2, 1831 (4 Stat., 487; Rev. Stat., sec. 725), the limitation being: "That such power to punish for contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of said courts.

It is also claimed by critics of this bill, as well as the critics of the Hoar bill, that it was unconstitutional because it was class legislation. They say that it was class legislation because it applied only to cases growing out of labor disputes, and therefore it is unconstitutional. Our answer to that is that this legislation is no more class legislation than is that legislation which now authorizes the Federal courts to issue injunctions and restraining orders in cases growing out of patent rights in any manner in which they see fit, and that law exists to-day.

It has been on the statute books since 1870. Patent cases to-day occupy a separate class by themselves with regard to injunctions, and I have been unable to find wherein the point has ever been raised as to the constitutionality of that statute.

Mr. TIRRELL. I would like to have you show the analogy of patent cases with the matter of general application.

Mr. FULLER. I will. With regard to this law, the court, in *Yuengling v. Johnson* (30 Fed. Cas., p. 896), said:

Before the passage of the judiciary act of June 1, 1872, an act of Congress revising, digesting, and consolidating all the laws relating to patent rights was passed July 8, 1870 (see 16 Stat., 206), and a section enacted in it authorizing the courts of the United States to deal with injunctions in patent cases in a special manner. This section placed injunctions in patent cases on a different footing from other injunctions. In this particular class of cases the courts were released from the requirement to adhere strictly to the rules of practice prescribed by law or rule of court in general for the Federal courts sitting in equity, and the circuit courts were "vested with power upon bill in equity, filed by any party aggrieved, to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable."

Thus was authority given to grant injunctions in patent cases, not upon such limited terms as were at the time required by law or rules in equity to be observed in other cases by the circuit courts of the United States sitting in equity, either as to notice, security, or other requirement; but authority was given to grant them in patent cases on such terms as accorded with the course and principles of courts of equity in general and as the particular court in which the motion was made "might deem reasonable." This law made injunctions in patent cases exceptional and conferred on United States circuit courts an unrestricted discretion as to the terms of granting injunctions in them. This provision of the law of 1870 has been carried into the Revised Statutes, with slight literal modification, and stands now the law of the land in the form of section 4921. Thus, in patent cases, where the emergency was urgent, the court might grant injunctions without reasonable previous notice, before the law of 1872.

I cite that because it seems to me as a layman that if our bill is class legislation then that must necessarily be. But I will say this to the committee: If in your judgment you think this bill is unconstitutional because it is limited to labor disputes, then on behalf of the men I represent we will have no objection whatever if you amend that bill so as to make it apply to labor disputes affecting interstate commerce, and I do not think it will be seriously questioned by lawyers, at least, that Congress has the authority to regulate interstate commerce. The injunctions which have been issued against the men I represent by Federal courts have been granted on the ground that they were engaged in interstate commerce and on the strength of the grant of the Constitution to regulate interstate commerce.

Now, then, I say that if injunctions can be issued on those grounds, why can they not be regulated upon those grounds? The act to protect trade and commerce from unlawful restraints and monopolies has in it a provision which gives the courts of the United States the authority to restrain and enjoin acts which in themselves, by that very act, are declared criminal; certain acts are made criminal, and that is followed by a provision in the same law authorizing the courts to restrain the commission of those acts. Has anybody seriously contended that the Sherman antitrust law is unconstitutional because it authorized courts to restrain acts which are in themselves crimes and that authority is not given in general as to all crimes and all acts

which are in themselves crimes? I have not heard of it. The act to regulate commerce, approved February 4, 1887, under this same authority of the Constitution, says that the courts can restrain the roads from disobeying certain orders of the Interstate Commerce Commission, with regard to what? With regard to interstate rates, things which Congress has absolute control over.

Now, then, I say that if Congress can specifically legislate in regard to injunctions as between common carriers engaged in interstate commerce and the shippers, why in all fairness, why in all reason has it not the same right to legislate with regard to injunctions as between those same carriers and their employees, especially when the carriers get their injunctions on the ground that they are engaged in interstate commerce, and the Federal courts have jurisdiction as the result of the grant in the Constitution? I take it that the grant of the Constitution to Congress to regulate interstate commerce is unlimited. It can apply rules and laws as to that particular thing, which it does not necessarily have to make uniform throughout the country. It is a special grant, and Congress is not limited, according to the decisions of the Supreme Court, in exercising that authority. It is only limited as to the things that the Constitution says it shall not do. Article I, section 8, of the Constitution provides that—

The Congress shall have the power * * * to regulate commerce with foreign nations and among the several States.

In *Gibbons v. Ogden* (9 Wheat., 1) Chief Justice Marshall said:

It is the power to regulate—that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

They call this “class legislation.” Many a thing is injured by the name given it rather than by the demerits of the thing itself.

The fourteenth amendment to the Constitution provides that “No State shall deny to any person within its jurisdiction the equal protection of the laws.” And this is the ground upon which the opponents of this legislation base their constitutional objections, yet it has no reference whatever as to what Congress can do.

We have submitted this bill to our attorneys, and we submitted it to them with instructions that we wanted an opinion not with the view of pleasing or displeasing. We asked them several questions. One of them was, Could this bill be declared unconstitutional because it applied only to labor disputes? I will be glad to submit the opinion of the attorneys to the committee for its information. Our attorneys say that while the Supreme Court has passed upon the question of class legislation, all of those cases have grown out of State statutes, and in view of the special legislation which has already been passed in regard to injunctions in interstate commerce and in regard to patents, we think that we can reasonably contend that this bill is not unconstitutional.

The railroad rate bill which recently passed the House and is now pending in the Senate has in it several provisions which permit the courts to restrain certain acts of the carriers as between them and the shippers, and I fail to see how anyone can successfully differentiate, and in view of what has happened, in view of the action taken by

our courts in issuing injunctions upon railroad employees, because of the fact that they are engaged in interstate commerce, why Congress can not as successfully legislate as to injunctions which affect them as it can on a question that affects the shippers. And I say to you this injunction question is as important, aye, I believe more important, to the men I represent than the rate bill or any such legislation is to the people of the United States. The most you can say against discriminations, and so forth, by railroads is that they deprive people of property. It is a financial consideration.

But I say to you, Mr. Chairman, that the courts have gone so far in issuing restraining orders that they have not stopped at property rights, and in the last Congress there appeared before this committee men who submitted arguments that not only property rights, but personal should be protected by the injunction. Property rights have been so predominant in the minds of courts who have issued these objectionable writs that the personal rights of the men who have been enjoined by them have been lost sight of. I say that no matter upon what prayer he may issue the injunction, I care not how many men make affidavit that railroad men are going to strike for the sole purpose of tying up interstate commerce and the mails, any man who has had the intelligence to be elevated to the Federal bench of the United States should know that to grant an injunction to restrain those men from quitting the service, no matter what that prayer may be, that he is interfering with the personal rights of those men. But that has been the case, Mr. Chairman, and it has been repeated.

We have one case where a judge practically restrained men from quitting the service of the company, and it was taken to the circuit court of appeals and reversed, and we thought that was a good example. But in about ten years we found a judge down in St. Louis doing practically the same thing. Now, I say that if injunctions can be issued with regard to the shippers and carriers to protect property rights, a financial consideration, in the name of American liberty why can they not be regulated by law when they have gone so far as to take personal liberty from citizens?

I have here a clipping which I will not take the time to read, but which I wish to submit to the committee, which shows there is at least one Federal judge in the United States who believes he can run his court without issuing ex parte restraining orders—Judge Quarles, of Wisconsin.

Mr. HENRY. He has not been working at it very long, has he?

Mr. FULLER. This is a clipping from a New York paper of January 4, 1906.

Mr. HENRY. I say Judge Quarles has not been working at it very long?

Mr. FULLER. Issuing labor injunctions?

Mr. HENRY. Running a Federal court.

Mr. FULLER. No. He was United States Senator during the last Congress.

Mr. BIRDSALL. I understand that he has since repudiated that. I have seen a statement to that effect.

Mr. FULLER. I assure you that I have not read or heard of it. Had I, I would not have submitted this clipping. I am glad you spoke of it.

Mr. BIRDSALL. I saw that in a paper a day or two ago.

Mr. STERLING. Does not this bill of yours go further and relate to more than the issuing of injunctions to prevent men from quitting work?

Mr. FULLER. Oh, yes, yes. It is not confined to any particular act. It does not say that they shall give opportunities to be heard whether they are going to enjoin from quitting work or committing crime, or anything of the kind.

Mr. LITTLEFIELD. I did not get that question.

Mr. STERLING. I asked him if he did not think that the bill that he was discussing went further than simply with reference to injunctions for enjoining men from quitting work or striking.

Mr. FULLER. I say yes.

Mr. GILLET. Do you know of any law for enjoining men from quitting work if they want to quit?

Mr. STERLING. I asked him that question. I did not know whether he limited it to that or not.

Mr. LITTLEFIELD. That was asked in regard to the illustration.

Mr. HENRY. I want to submit a question to you now. You have said that if this is class legislation, Congress has the power to pass it. And you have said that Congress has plenary power over interstate commerce in this country?

Mr. FULLER. Yes, sir.

Mr. HENRY. Now, let us follow that question to its logical sequence. Suppose Congress should pass a law saying that all farmers should be authorized to ship articles of interstate commerce from State to State, but the laborers of the country should not be authorized to ship interstate commerce from State to State; that would clearly be class legislation, would it not?

Mr. FULLER. Well?

Mr. HENRY. Now, what do you think of that sort of a proposition, and do you think there is anything in the Constitution that would prevent us doing that? I am following the proposition to its logical conclusion, and I want an answer to that question.

Mr. FULLER. My answer would be this: I believe that the Supreme Court of the United States being human and a part of our society, it is controlled the same as we are by what seems to it to be right. Now, I can not conceive of a contingency which would arise which would demand the legislation you suggest.

Mr. HENRY. Well, taking your premises as being correct, it might arise if a spirit—

Mr. FULLER. No; I think this. I think that so far as those highways of commerce are concerned, the courts or Congress could not constitutionally deprive one man of the right to ship over them as against the other. I think that those highways of commerce are for the purpose of benefiting the whole people and promoting their general welfare, and I do not think the example you suggest would be constitutional.

Mr. HENRY. Yes.

Mr. FULLER. Yes; but I do not think any such contingency would arise.

Mr. HENRY. You say that the Supreme Court is human, and I am inclined to think that you are right about that. They have held that

lottery tickets are articles of interstate commerce and can be absolutely prohibited, and they have hinted in some cases that Congress might put an embargo on interstate commerce; and if we take that premise as correct and say there is nothing in the Constitution to prevent class legislation, it takes us a long way, and I would rather that you would make it appear that this bill is not class legislation, but is a meritorious bill.

Mr. FULLER. I am saying that. I am only suggesting that if in the minds of the committee they thought it was not proper in its present form we would have no objection to its applying to interstate commerce. I say that it is no more class legislation than acts previously passed by Congress. I might as well say—and I am violating no secret or confidence—that this bill is an Administration bill. It was recommended by the President in his recent message to Congress, and it is my understanding it has had the scrutiny of the Administration.

Mr. GILLET. Has the President had before him this particular bill?

Mr. FULLER. Now, I do not care to get too much into detail; the President's message speaks for itself. The President's message is an indorsement of this bill identically as it is before you.

Mr. GILLET. Has the President expressed himself as being in favor of this bill?

Mr. FULLER. He has; it is an Administration bill.

Mr. LITTLEFIELD. Have you the language of the President's message at hand?

Mr. FULLER. Yes, sir.

Mr. HENRY. I would like to know what the Attorney-General thinks of it before we get to that. Has he examined it?

Mr. FULLER. I understand so. I understand it has had the scrutiny of the Administration, with all its resources in regard to such matters, and I think there are others here who know the same thing.

Mr. GILLET. Do you know the language of the President in relation to it? I thought that I had his message here, but I have not.

Mr. FULLER. Yes, sir; he goes on and speaks of injunctions and then uses the following language:

"The remedy is to regulate the procedure by requiring the judge to give due notice to the adverse parties before granting the writ, the hearing to be ex parte if the adverse party does not appear at the time and place ordered."

Mr. Chairman, I did not intend to say as much as I have. I did not intend to go so deeply into the matter of injunctions, because the committee has had it all before. I do not care to burden the committee or the record with anything in the way of a repetition. But I wanted to add this: I said that committees of Congress had condemned the action of judges in issuing certain injunctions. They have also abused their power to the extent of calling forth from the President his pardoning power under the Constitution to release from prison men who have been put there for alleged contempts of court or alleged violations of these injunctions. The Attorney-General's report for 1902, page 253, shows that the President pardoned five coal miners who had been sentenced to prison for from one to six months for alleged contempt of court in violating an injunction issued in the Federal court for the western district of

Virginia. In his letter to the President recommending the granting of the pardon of these men, the Attorney-General said:

The facts in this case are fully set forth in the brief of the pardon attorney.

I just want to quote a few extracts from the brief of the pardon attorney in his letter to the Attorney-General:

After a careful study of this testimony I can not find a shadow of evidence which goes to prove that the defendants, Webber and Haddow, by any act or word violated the injunction of Judge SImonton issued in October, 1901, unless it be admitted that the quiet and peaceable efforts of these two men, who were duly appointed organizers of the United Mine Workers of America, to organize lodges among the miners of Virginia be a violation of the injunction.

* * * * *

There is also filed a copy of the opinion of the court. It is stated that Webber and Haddow admitted that they are officers of the United Mine Workers of America.

What a crime! What a crime to admit that they are members of a labor organization!

And that they came to Virginia in October, 1901, and March, 1902, for the purpose of organizing lodges among the mine workers.

What a crime that must have been in the eyes of his honor!

It is stated in the opinion that the right of employees to voluntarily join a union that has only legal purposes in view can not be denied; but if the object of the union is illegal it appears to be well settled that the persons who combine in such efforts are conspirators. Further in the opinion it is said:

"In the first place, it is hardly open to serious question that the ultimate purpose of the union is not legal. Its purpose is to secure control of mining operations, including those under the management of the receivers of this court. "But the act of the union in ordering coke pullers and loaders to stop work is in itself a direct contravention of the order of this court directing the receivers to operate the plant. In other words, such acts are illegal."

The court instructs the receiver to operate the plant, and in case the men through their organization see fit not to work for the receiver it is a violation of the injunction, so this honorable court says.

But the Attorney-General in passing upon this case does not concur with his honor as to the ultimate purposes of a labor organization. In his letter to the President he says:

I am unwilling to base a recommendation on seeming acquiescence in the view of the court that the ultimate purpose of the union (the United Mine Workers) is not legal.

I have here a certified copy of the pardon of the President of one of these miners. There were six pardoned, and I just brought this here for the purpose of showing it to the committee.

The document referred to is here inserted in the record, as follows:

THEODORE ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas William Weber was charged with a contempt of the United States circuit court for the western district of Virginia, and after a hearing before Hon. Henry C. McDowell, United States circuit judge for the western district of Virginia, was adjudged guilty, and on March 25, 1902, sentenced to imprisonment for six months in the city jail of Lynchburg, Va.; and

Whereas it has been made to appear to me that the said William Weber is a fit object of executive clemency;

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, in consideration of the premises, divers other good

and sufficient reasons me thereunto moving, do hereby grant unto the said William Weber a full and unconditional pardon.

In testimony whereof I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the city of Washington this 6th day of May, A. D. 1902, and of the Independence of the United States the one hundred and twenty-sixth.

[SEAL.]

T. ROOSEVELT.

By the President:

P. C. KNOX, *Attorney-General*.

I stated in the beginning that this question had been before Congress in three different forms. I am advocating to-day the passage of the Gilbert bill. We advocated the passage of the other bills. Congress did not see fit to give them to us. We did all we could in a reasonable way, as we thought was reasonable at least, to show Congress that we were entitled to that legislation. It was not granted. This bill before you, as I have said, is the proposition and the product of the Administration. Now, we feel that we can afford—

Mr. LITTLEFIELD. Do you understand, Mr. Fuller, that the Administration is still behind it, urging its passage?

Mr. FULLER. I do, sir; the President's message speaks for itself.

Mr. LITTLEFIELD. I understand; but do you understand that in addition to that the Administration is still behind it?

Mr. FULLER. I have not heard of them backing track on it.

Mr. HENRY. I thought they were standpatters.

Mr. FULLER. Well, I do not know but that standing pat sometimes is all right. If they will only stand pat on this bill, I do not see anything wrong in that.

Mr. SMITH. It depends on the thing, whether it is all right or not?

Mr. FULLER. Yes, sir; it depends on the thing that one stands pat on.

The CHAIRMAN. You said you wanted a half an hour, and you have talked forty-five minutes already.

Mr. FULLER. I will quit in just a moment. I only want to say this, Mr. Chairman, that if in the minds of this committee either of the other two bills—the Bartlett bill or the Little bill, which provide a way of meeting this question—are better bills than this one, and they wish to pass them, either one of them will be entirely welcome to the men I represent, and I think that from a committee of lawyers we can reasonably hope that some effective legislation will come out of these three propositions.

Mr. Chairman, I have a copy of the opinion of our attorney on this question. It covers four typewritten pages. I will be glad to leave it with the committee. I thank you for your attention.

Mr. BIRDSALL. This bill seeks in no manner to diminish the power of the court as to the injunction—that is, as to the character of the injunction or as to its power for punishment of violation?

Mr. FULLER. No, sir.

Mr. BIRDSALL. It simply goes to the question of the notice before any writ shall be issued.

Mr. FULLER. Yes, sir. As I have stated, we do not want to be understood as claiming that this is a cure. I think if it were a law, injunctions would be issued, and objectionable ones, too. There have been permanent injunctions issued after hearing, in which the court refused to modify its injunction to the extent of striking out that part which prevented the men from quitting work in a body.

Mr. Chairman, Mr. Furuseth, representing the Seamen's Union, will next address you.

(At this point the chairman left the committee room, and the chair was assumed by Mr. Littlefield.)

WASHINGTON, D. C., February 2, 1905.

Mr. H. R. FULLER.

The Raleigh, Washington, D. C.

DEAR SIR: Referring to your letter of January 28, 1905, inclosing a copy of H. R. 18327, being a bill entitled "To regulate the granting of restraining orders in certain cases," I make the following reply to the questions submitted by you:

1. If this bill should become a law, it would, in my opinion, grant no new authority or power to Federal judges. But as a matter of abundant caution I would suggest that to avoid the possibility of such a construction being given to the act there should be added a proviso negating such an inference.

2. The foregoing answers your second question, which is whether the passage of such an act would imply the affirmative power of courts to issue injunctions in labor disputes.

3. As to whether such an act as this would be constitutional, because it applies only to cases growing out of "labor disputes," it is impossible, I think, in the present state of the judicial decisions in the Supreme Court of the United States, to give a positive answer. All the cases in that court which determine what is and what is not objectionable as "class legislation" grow out of controversies as to the constitutionality of State statutes. The fourteenth amendment to the Constitution of the United States provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." There is no express provision of the Constitution which, in terms or in substance, applies the same restrictions to legislation by Congress. The same question arises here which arose under the contract clause of the Constitution—the States are forbidden to pass any law impairing the obligation of contracts: but there is no prohibition against the United States doing so. And yet, in various cases, there have been intimations by the Supreme Court of the United States, or by some members of it, that the dictates of natural justice might be held to forbid the United States from passing any law which would have the effect of abrogating existing contracts. There has never, however, been any express adjudication by the court to that effect.

In the cases in the Supreme Court involving State statutes claimed to be invalid because they are class legislation the Supreme Court has said that to sustain such statutes the differences between the cases which are governed by it and those which are excluded must be such as in the nature of things would furnish a reasonable basis for separate laws and regulations. In other words, the question is whether the discrimination is purely arbitrary or has some basis in that which has a reasonable relation to the object sought to be accomplished.

To defeat your proposed bill on the ground of unconstitutionality as class legislation would require, therefore, that it should be held that class legislation by Congress is invalid because of some implied prohibition on that subject and that "labor disputes" can not be reasonably distinguished from disputes in general which come before courts for adjudication. In my opinion the Supreme Court would not so hold.

It occurs to me, however, that the object which the organizations you represent have in view might be accomplished by amending the bill so that it will refer only to "labor disputes" affecting interstate commerce, since the Constitution of the United States itself makes a clear distinction between interstate commerce and intrastate commerce by giving jurisdiction in the first case to the General Government and in the second to the separate States.

4. I think there would be grave objection to amending the bill so that its provisions would apply to every case in which a Federal court is asked to grant an injunction or a temporary restraining order. There are many cases in which the requirement of notice would defeat the very object of the proceeding. Take one illustration out of a hundred that would occur to any practicing lawyer: Money is about to be paid and the object of the bill is to prevent the payment and protect the rights of the complaining party. If a notice of even one day should be required the money could be paid before the matter would come before the court and the complainant would have no remedy.

I should say that if the bill was amended, as suggested in this fourth inquiry, it would be so objectionable that it would be impossible to have it passed or to obtain for it any substantial support in either House of Congress.

5. As to whether, if the bill were amended so as to make it apply to extraordinary writs in general, it would apply to labor injunctions, is simply to ask whether the writ of injunction is an extraordinary writ. I think the word "extraordinary" in that connection would be so ambiguous that it would be highly injudicious to use it. Technically, I believe that the writ of injunction is an extraordinary writ like that of mandamus, certiorari, etc.; but it is so much more commonly used than the other writs which are classed as extraordinary that a judge who wished to issue an injunction might very well say that if Congress had intended to include so common a writ as the writ of injunction it would have designated it by name and not by the use of the adjective "extraordinary."

6 and 7. As to whether, if this bill should become a law, the State courts could issue injunctions against employees engaged in interstate commerce without giving them an opportunity to be heard. It is clear, I think, that the bill as it stands would not affect proceedings in the State courts, nor do I think it could be amended, so long as it applies to labor disputes in general, so as to affect proceedings in the State courts. Congress has no power to direct how proceedings in the State courts shall be conducted except in matters over which jurisdiction is given Congress by the Constitution of the United States. There are many labor disputes as to which the States have absolute control.

This leads me again to the suggestion that if the bill were amended so as to apply only to labor disputes affecting interstate commerce it could be made much stronger, because, in my opinion, Congress, as to labor disputes involving interstate commerce, would have the right to direct that not even in the State courts should an injunction or restraining order be granted without notice to the parties affected.

8. As to whether, if this bill should be passed as it stands, employers would resort for injunctions to the State courts instead of to the Federal courts, I should say that the bill would probably have that tendency. If it were amended, as I have suggested in answer to the preceding questions, it would not, of course, have that effect, because the bill would apply then to proceedings in any court, State or Federal.

9. I see no reason to suppose that such a bill as this could be evaded by the courts issuing a writ of mandamus or other process before hearing was had. A mandamus is never issued until an opportunity has been given to the respondent to be heard, and I can not conceive how any other writ could be used in the way suggested by this question.

As to your further request that I shall make any suggestions which occur to me in this regard that would be of benefit to those whom you represent, whether they are called for by the specific question asked or not, I would only say that I think the bill might be more effective if amended in accordance with the suggestions I have made above. I think this could be done by inserting after the words "labor disputes" the words "affecting interstate commerce," and by adding to the bill the words "*Provided*, That nothing herein contained shall be held to authorize the issuing of a restraining order or an injunction in any case in which the same is not authorized by existing law."

Yours, very truly,

A. S. WORTHINGTON.

STATEMENT OF MR. ANDREW FURUSETH.

Mr. FURUSETH. Mr. Chairman and gentlemen of the committee, let it be clear in the minds of this committee and of Congress that labor, organized or unorganized, does not ask for the destruction of the injunction as it rightly applies to the protection of property. We do protest against and resent the perversion of the equity power, glaring examples of which you have here in your records.

You seek our reasons for asking legislation to restrain judicial abuses of the equity power in labor disputes. I am commissioned by laboring men to present some of their reasons. We feel strongly on this question. You have had it under consideration for years, and before this committee makes any recommendations to the House I

want to make suggestions which I believe go to the bottom of this subject.

The one-man power to enjoin, to forbid, to legislate, except as used by the fathers, was, we think, first conferred upon the Roman tribunes, elected for one year, and to be used to protect the plebians against the patricians. This power was absolute and irresponsible. The person of the tribune was made sacred. Contempt of him or violations of him were punished by death. The tribune, having been clothed with absolute and irresponsible power to forbid, it was soon understood that this included powers to command, and the tribunitian power created the Roman Emperor. The powers of the Emperor, who in his person represented and exercised all the authority of the people, made him sovereign. These powers were resurrected and conferred upon Carl the Great, the first Emperor of the Holy Roman Empire of the middle ages.

As absolutism developed as freedom was lost to the people, the kings assumed, in theory and in fact, the powers which had been vested in the emperors of the old Empire—they became sovereigns. The power to forbid—to legislate—was vested in the king. He was sovereign, and by virtue of his sovereignty could and did rule by command or proclamation. Under the name of equity this absolute power was adopted into our system, but only in the form and for the purpose then used in England. It was conferred upon our Federal judges, who are appointed for life. We suffer under the misuse of this power. We believe that it has been unduly extended. We come to you to submit our complaint, and it is not that the judges have not power enough, but that they are exercising powers which we believe they have not. We fear this power; we feel its results. From what we have seen we believe it capable of infinite extension, when permitted to go beyond the boundary set at its adoption into our system. I shall now endeavor to state why we fear it and what reasons we think we have for this feeling.

Any condition of society, no matter how produced, which condition prevents a healthy family life, is destructive of humanity and should be resisted.

The condition may be inherent in the system, it may have been artificially created by legislation or by judicial decisions. In either case it is man's sacred duty to insist upon such changes or remedies as shall put within reach of the industrious father the power to support a family in health.

The energies of existing society are devoted to the production of wealth for sale. The struggle between individual firms, communities, and nations is to produce wealth so cheaply as to be able to undersell any other.

To be the workshop of the world was the ambition of England of the Manchester School of Economics. To accomplish this, land, machinery, and labor had to be brought to the lowest figure and skill to the highest. Land and machinery bought for the lowest figures and held in private ownership were conceived to be the most economical, and the question was how to get the cheapest possible labor. The workers must have sufficient wages for subsistence and reproduction.

Under the old system of production, labor had been needed especially on the land, and it had therefore been tied to each manor by

registration, and its wages determined by judges sitting in quarter sessions under the statute of laborers. The concentration brought about by factory production made the old system costly, hence inconvenient, and the registration in manors and the statute of laborers were repealed. The laborers, however, remained on the land in too great numbers, and they were needed in the factories. When needed on the land they were tied to the land. Now, when needed in the factories they were driven from the land. The first condition of getting labor cheap is to so arrange that it becomes plentiful and dependent, hence the razing of old English villages and the driving of the workers into the cities, where, landless and homeless, they must work for such wages as the employers should be willing to pay.

But as wages must be sufficient for sustenance and reproduction, the cost of food became all important. For generations England had maintained a protective tariff on food stuff in the interest of the landowner. The factory owner wanted cheap food in order to get cheap labor, and between the two interests arose a fierce struggle, which ended in the present system of free trade in food stuffs. Under the existing system of land tenure and prices, farming became unprofitable; tilled land was turned into pastures, and more laborers were driven into the cities to bid against those already there. Thus followed further reduction in wages and a still further lowering of the standard of living. It came to a condition in which the husband working sixteen hours per day was utterly unable to provide for the family. Children were compelled to work in the dusty atmosphere of the factories for fourteen to sixteen hours per day; their physical development was arrested; their mental and moral development became impossible. Still lower wages and standards had to go, and mothers were compelled by bitter need to work underground, doing work now done by mules, steam, or electricity, or to stand on their feet tending machines until it often happened that they were taken with labor pains at their work.

Labor, voiceless, homeless, and hungry, had been made so cheap that its very cheapness was destroying its efficiency and threatening its extinction.

Laborers resisted to the best of their ability, but, leaving one master who was bad, often meant going to another who was worse. If one or more men quit there were others to take their places; quitting work singly was no remedy, since it could not interfere with production by stopping machinery. They then joined together in unions—voluntary associations—based upon the right of quitting work individually. As subjects they had the same rights as other subjects—freedom of locomotion, of speech, of the press, and of assembly. Assuming that they did not lose these rights by laboring for a living, they assembled, they discussed their grievances, they printed them in pamphlets, books, and papers. They appealed to others to join with them, and determined to refuse to labor until their worst grievances should be remedied, and found that, while the statute of laborers had been repealed, the conspiracy law, based upon this statute, was, according to the rulings of the judges, still in force, and they were punished for doing, as workmen, what they, as subjects, had a full right to do.

They did not give up, although they found themselves thus punished. Combinations to raise wages being forbidden, they still com-

bined. Notwithstanding traitors in their own ranks, they struggled onward. They punished their traitors as deliberately as did the old Germans in their Fehm-Gericht. They were executed or transported for having acted as judges and executioners, but they still persisted. They could but partly stay the inevitable downward trend; but at last it became evident that wages must be sufficient for sustenance and reproduction, and legislators were compelled to pass laws legalizing collective action and curtailing the power of the judiciary.

The trade-union acts were passed, and the conspiracy law was amended, so that men in England might use their rights as subjects to defend their interests as workers. How many men were driven from their families, executed, or transported, to what extent the race was crippled, before relief came from legislative depression of the wage rate or judicial usurpation in the interest of cheap labor, we can only surmise, but it came at last, thanks to the bitter and determined struggle of the workers, assisted to some extent by humanitarians, chiefly members of England's old aristocracy.

Not that the struggle there is won, but improvement has begun, and that it will continue and finally be won may reasonably be expected from the temper which could face prison and transportation in the past.

The political, social, and industrial conditions of the United States have throughout been patterned upon those of England.

Substantially our President has the power which was vested in the King of England at the time of the Third George. Our Senate and House of Representatives are substantially the House of Lords and the House of Commons. We copied from England the common law, our system of jurisprudence, with the Bill of Rights, and the powers of the judges. We adopted the English system of land tenure, entail excepted.

Our industrial system is taken from England and has followed the English lines in its development; chattel slavery in some States, contract slavery in all at one time. Term contracts to labor were for long in common use in this country and were transferable by inheritance or sale. They were recognized by the organic law, and one of its clauses provided for their enforcement. That this system did not in the earlier days of the Republic produce the same results as in England was due to the unlimited amount of land ready for squatters' occupation, and when the servitude became too galling the Indian country west of the Alleghenies lay open for settlement, safe from servitude and assured of sustenance.

After the adoption of the Declaration of Independence and the Constitution the enforcement of term contracts to labor was stopped in some Northern States, and such contracts ceased to be made. The individual workman could leave the employer with whom he was dissatisfied and seek another. The white worker's right of locomotion and of the absolute ownership in his own body became, except in one or two callings, recognized. The system of chattel slavery was destroyed, and an amendment to the Constitution forbidding its existence was adopted.

With freedom to seek better conditions and with land yet plentiful there were early marriages, large families, and a healthy people. There was no mournful cry of race suicide. But as land became

settled or absorbed in individual ownership, and this outlet was stopped, city slums grew; low wages, long hours, and want became more and more common here. Wages went below the line of subsistence and reproduction, the number of marriages and of children decreased, while prostitution grew. This became so apparent that the census gave much attention to ascertain the extent of the condition. It was found to be worse than was suspected, and the talk of race suicide was heard—women standing on their feet until their capacity for motherhood was destroyed; children stunted in their physical and mental growth by work utterly unsuited to their age.

Remedies more or less successful were suggested and tried. Here, as in England, men quit as individuals, but found the quitting ineffective. Here, as there, they came together in voluntary associations and quit work in unison until their grievances should be redressed, and in doing so found themselves violating statutes or judicial decisions designed purely to keep labor cheap. Constant agitation, repeated violations and punishment gradually molded a public opinion that compelled a final recognition of men's right to quit work collectively—to strike. Statutes and decisions treating the strike as conspiracy were repealed or became obsolete.

Men who had struck endeavored to persuade fellow-workmen not to take their places—this in order to compel an adjustment of the trouble—and when adjustment did not follow, appeals were made to the public to cease giving patronage to the unfair firm—that is, they levied a boycott on the firm in question.

Thus the two main weapons of organized labor came into use, and as they grew older and more systematic they became so effective that the employer was looking for some remedy, and, from out of the lumber room of the past, came the injunction, as it was when most abused by the court of star chamber; that is, it came as a proclamation by the court forbidding the workers to perform some specified or unspecified acts of which the employer complained, on pain of being punished for contempt of court. This seems to be what the injunction is nowadays when used in labor disputes. It used to be "a judicial process operating in personem and requiring the person to whom it was directed to do or refrain from doing particular things," and this to protect property right.

Like other parts of our judicial system, we have our injunctions from England. The King, by virtue of his absolute power—legislative, judicial, and executive—would be appealed to when some one was about to do something not forbidden by the law, yet which, if done, would cause great injury. Something needed to be protected; the law was insufficient, and, by virtue of his absolute power, the King could and did supply the remedy. Addressed to one subject, it was a royal command; if to many, a royal proclamation. In the first instance it was intended to protect the individual, and in the second the community. As the law became more complete the need for such proclamations became less imperative, their places being taken by statute law, or usage accepted as law; but, law and usage being general, in their application, serious injury might happen to individuals; hence the royal power was more and more restricted to individual instances of injustice or injury.

The King, being too busy to sit in court to exercise his power, delegated it to his chancellor, and it grew apace until it came into serious

conflict with the common law and the jury system. Its purpose being to prevent great wrong by forbidding the action which would cause such wrong, the penalty necessarily had to be swift and certain, and, violation being a disobedience of the King's command—contempt of the King—and the facts being easily ascertained, punishment was immediate in operation and severe in kind. The royal power being irresponsible and absolute, it was necessarily misused by the individuals intrusted with its execution and their friends, and had to be curtailed, circumscribed, and carefully guarded.

There was a time when the court of star chamber was used in England as our courts are now being used, to forbid the doing and then punish disobedience without trial by jury in any and every direction. Personal liberty was at the whim and caprice of this court. But the English people would not long tolerate any such use of the royal power. The people abolished the court of star chamber and compelled the King to sign the Bill of Rights.

It became the fundamental principles of chancery, or equity, that—

(1) It was to be exercised for the protection of property rights only.

(2) "He who would seek its aid must come with clean hands."

(3) "There must be no adequate remedy at law."

(4) It must never be used to curtail personal rights.

(5) It must not be used to punish crime.

It was substantially in this shape that it was accepted by this country, ingrafted in our Constitution, and the power of its administration conferred upon our courts.

Equity law and jurisdiction at that time had a specific meaning, and any extension in jurisdiction, any enlargement of scope, must come from the people through an amendment to the Constitution or there is judicial usurpation.

If injunctions which nowadays are issued in disputes between employers and employees can stand the test of these principles our complaint should be against the law; if they can not, then we have a just complaint against the judges who, either from ignorance or mistaken zeal for public order and cheap labor, misuse their power—act as a sovereign in issuing his proclamations.

The fundamental principle of American law, as we understand it, is that there shall be no property rights in man. A man's labor power is part of him; it fluctuates with his health; decreases when he grows old, and ceases at his death. It can not be divorced from man, and therefore, under our system, can not be property. Property may be bought, sold, or destroyed without destroying the possessor thereof; it is the product of labor or of nature. Labor is an attribute of life, and through no system of legitimate reasoning can it be treated or denominated as property. An individual, a firm, or a corporation runs an enterprise for the production of some form of property. Through grant or purchase land has been obtained. Upon the land buildings have been erected and machinery installed, and to the plant has been brought the necessary raw material. These things are property, and, based upon its possession, contracts are entered into to furnish within a given time a stated amount of commodities.

Giving this property in pawn, money is borrowed to pay operating expenses. But without labor these things will produce nothing. Labor is obtained, and production begins. Being in business to

make money, the company in question—assuming the producing concern to be a combine—first endeavors to find out how much of any given kind of work a man can do going at his highest capacity, and it begins the piecework. Prices are gradually reduced, until the greatest capacity is ascertained, and that becomes the standard of production. Wages are gradually reduced until the labor of the husband can not sustain the family. The wife helps in any way she can, and the children are sent to the factory. Still the earnings are too small, and the wife goes there also. Wages are under the danger line, but are still going down. A poorer home; ragged and untaught children growing up as half savages. Young men and women see the situation, and refrain from matrimony. Marriages and births are on the decline, and the rising generation is stunted.

The laborers get together in voluntary association; that is, they use their freedom of assembly. They bring their grievances before the management; petition for redress of grievances. They are refused, and, to enforce their petition, they use their right to quit work—use their freedom of locomotion. They publish the facts of the disagreement, the causes which led thereto; they induce, or endeavor to induce, other workers to make common cause with them—their right freely to print and publish. They are successful to such an extent that production is partially stopped. The company endeavors to get other men, and the men on strike appeal to the public to refrain from purchasing commodities manufactured by the firm; they levy a boycott. They appeal to fellow-workmen and the public to use their purchasing power to redress a grievance. Sales of stock on hand decrease, and the company is unable to meet its obligations, fill its orders, or fulfill its contracts.

The company then goes to some judge and appeals to him to use the equity process to protect what it calls its property. It sets forth that it has the land, the appliances, the raw material, and contracts to deliver goods, but, owing to a "conspiracy" on the part of labor, it is unable to get workmen, and its property—that is, its business—is being destroyed. The judge takes the statement and issues an order forbidding the workmen "to interfere with the business" of the firm. The workmen know that disobedience means imprisonment for contempt, and, disheartened and hopeless, they obey. The firm gets new men; its business moves again; but those at work must live in squalor, children must be laboring instead of at school, women must be in the factory instead of in the home. Home life is destroyed. Still fewer grow the marriages, still fewer the children. The equity process has been used so that homes are destroyed, women are made barren, and the coming generation of men are made unfit for their life work.

Has any judge the right to use the equity power in this way? The workmen have used their constitutional rights as citizens—freedom of locomotion, of assembly, of speech, and the press. They have not destroyed any tangible property; they have neither interfered with, nor threatened to interfere with, any property. But the attorney for the plaintiff sets up the idea that the earning power of property is property—that is, business is property. The earning power of a plant depends upon labor, and sales depend upon patronage. The firm can have no property right in labor, because that is inherent in the laborer and would mean property right in the laborer. The firm

has no vested right in the patronage of the public. Patronage is the free act of the patron. Under our system it is a new doctrine that the ownership of a store carries with it a vested right in the patronage or that the ownership of a factory carries with it the vested right to so much labor and at such prices as will make it profitable. Such doctrine followed to its logical conclusion would destroy all personal liberty, transform existing society, and reestablish the feudal system.

Do these men who are driving women into the factory and crippling the race come into court with clean hands?

They seek the aid of equity to protect their financial and industrial interests, and yet they run their industry in such a way as to cause untold misery, destitution, and crime. Wages so low as to cripple or destroy the race. If their hands be clean, how must they act to be considered unclean?

Injunctions—proclamations—used contrary to and destructive of constitutional guaranties of individual freedom are usurpation, whether they take place in a monarchy by the king or in a republic by a judge. The power is the same; its results are the same, and a people that will endure become serfs, will deteriorate and die.

Gentlemen, you have before you two bills dealing in different ways with injunctions. H. R. 4415, by Mr. Little, of Arkansas. You have had this bill before you during several Congresses. You have had hearings on it, and, so far as has appeared at those hearings, this bill would, if enacted into law, put a stop to the use of injunctions in labor disputes. That the relations between laborers and their employers are personal relations as distinct from property relations; that the rights of either party are personal rights, as distinct from property rights, will hardly be seriously disputed. If these are the true relations, then there is no occasion for the equity power to step in. We maintain that it is pure usurpation on part of the judge to so extend the powers granted to him as to cover labor disputes. We believe that by passing this bill you stop the usurpation and bring the law and the judges back to where it and they belong. Labor will be content with nothing less. Anything short of this robs the laborer, because he is a laborer, of his rights as a citizen.

You have also before you H. R. 9328, "A bill to regulate the granting of restraining orders in certain cases," by Mr. Gilbert, of Indiana. This bill, supposed to have had its origin in the White House, and drawn in the Bureau of Corporations, confers upon the courts sitting in equity absolute jurisdiction in all cases "involving or growing out of labor disputes." The judge is to give the defendant a hearing, but may, as in any other suits at law, proceed if the defendant shall fail to appear. We have complained that the use made of the equity process in labor disputes is usurpation of a sovereignty not granted to the courts. It seems to us that in this bill the grant is about to be made.

Sovereignty was partially (not wholly) delegated to the Federal Government; the States and the people are presumed to retain full powers of sovereignty. The judiciary has been permitted to claim title to and exercise an undefined authority by Congressional tolerance—the absence of prohibitive statutes.

Federal judges—I speak respectfully and by way of illustration—found a kind of "legal public domain" upon which any daring squatter might locate. The judiciary entered, took possession, and this

bill, 9328, is apparently designed to establish their title in fee simple, "to have and to hold forever."

Labor disputes are controversies between employers and employees, and they involve the hours of labor, the wage to be paid, rules under which work is to be performed, the number of apprentices, and the qualifications of men at the work. Growing out of them are strikes, boycotts, the inducing of men to quit work or to refuse to go to work, and efforts to induce the public to cease buying the goods produced. The judge sitting in equity is given jurisdiction by this bill, we think, over all these relations. He is to investigate, to hear and determine, to act, in fact, as arbiter, and he is given the equity power with which to enforce his decree.

If this be not the reenactment of the law giving to judges the power and making it their duty to set the wages as at the quarter sessions after hearing both sides, what is it? The Romans conferred this absolute and irresponsible power on a tribune, elected for one year, in order that he should use it to protect the weak against the strong. Are we going to give it to our judges, appointed for life, to be used by the strong against the weak? The English gave it to their judges to use in the interest of landed proprietors against the raise of wages caused by the black death. Thorald Rodgers, in his *Six Centuries of Work and Wages*, has told us the result.

Why can you not trust the judges? somebody asks. We do trust them. They are to use this power to stop strikes. When they have to choose between giving the award in favor of the employer who seeks to reduce wages or to have him stop, as he threatens, the business which gives employment to thousands, and thereby throw them out of work, his very humanity, as he feels it, will decide the award. It will be downward, downward, and downward, as under the law of the quarter sessions. It is said that this bill has the indorsement of the President. That can not be. If he understands this bill and then gives to it his indorsement, he is an enemy to honest labor struggling under adverse conditions for a better life—nay, he would be an enemy to human liberty. We do not believe, will not believe it.

In the labor movement, as well as in all walks of life, there are differences of opinion, divergent perspectives.

Organized labor demands an anti-injunction law that will absolutely limit the power of judges when they deal with controversies growing out of labor disputes; not a law that will be used as a compulsory arbitration act.

We want H. R. 4445.

We don't want H. R. 9328.

A THESIS ON INJUNCTIONS—THE BESSETTE-CONKEY CASE. BEFORE THE UNITED STATES SUPREME COURT.

In the Supreme Court of the United States, on the 7th and 8th of April, 1904, there was argued the case of Edward E. Bessette v. The W. B. Conkey Company. The case came before the Supreme Court on a certificate of the United States circuit court of appeals at Chicago, in which that court sought the advice and instruction of the Supreme Court as to the right of the circuit court of appeals to entertain an appeal taken by Bessette from a judgment of the United States circuit court at Indianapolis, fining Bessette \$250 for violating an injunction, and making the fine payable to the United States. The writer presented the case for the appellant.

I held that the right to an appellate review existed, and that the method of presenting the case in the higher court was through the process of chancery,

namely, appeal as distinguished from the process of common law, namely, by a writ of error. I went back in the jurisprudence of the mother country, to the creation of courts of chancery, and demonstrated that their method of procedure contemplated the administration of justice by acting upon persons as distinguished from the method of the courts of common law, which acted upon things; contending that the process in chancery was, first, the filing of a bill in which the complainant stated his grievances; then came the adjudication of the court as to whether the rights of the complainant existed, and this adjudication was first in the form of a temporary restraining order, which was intended to preserve the status until such time as the case could be finally determined. To all the intents and purposes of preserving the status until the final hearing, the temporary restraining order was quite as efficient as a final order in adjudicating that rights existed in the complainant which it was the duty of the defendant to respect. Such a preliminary order was interlocutory and not final, but being nevertheless a judgment of the court, it was susceptible of enforcement.

The enforcement of a judgment of a court at common law was by a writ of execution, on which the sheriff of the county, or in our Federal courts of common law, by the marshal of the district, compelled performance by levy and sale of property and payment of money according to the terms of the judgment.

In chancery there was no common-law writ of execution, and the method of enforcing obedience to the decree of the court was by a proceeding in contempt. Such proceedings in contempt were entirely devoid of any element of opprobrium, and were purely remedial for the purpose of protecting the rights of the complainant as those rights had been decreed in temporary order, and for the purpose of compensating the complainant for any such damage as he might have sustained by reason of the transgression committed against his rights by the defendant.

At this point Mr. Justice Brown interrupted the argument with this query: "What do you say, Mr. Rooker, would be the correct procedure in a patent case?"

"Yes, your honor; proceedings to protect a party against the infringement of a patent furnish an apt illustration. Such proceedings are always in courts of chancery, as distinguished from courts of common law. Assume, for the sake of illustration, that your honor is the owner of a patent, and I, as a rival manufacturer, construct and put upon the market a device which is an infringement of your rights under the patent. You then file your bill against me, stating your rights in the premises, and my transgression against them. The court then issues its temporary restraining order, commanding me to desist until the cause may be finally heard. If, notwithstanding that order, I continue to manufacture the offending article, then the question arises for your compensation. The remedy clearly exists, and a court of chancery would be impotent in the administration of justice if it had no authority to preserve the rights which its judgment declared in your favor, and to compel me to respect them. Your method of procedure then would be to file a motion, stating my transgressions against the decree, the injuries you had sustained thereby, and asking for proper relief; that action on your part is denominated in the nomenclature of the law a proceeding to punish me for contempt. It is purely and simply the chancery substitute for the writ of execution at common law. Upon my being produced in court, and my transgressions upon your adjudicated rights being ascertained, it would be the duty of the chancellor to refer the matter to a master, or the chancellor himself might take the evidence, to ascertain the extent of my transgressions, the profits I had made out of them at your expense, and he would add to the sum so ascertained the cost of your solicitor's fees and your other legitimate expenses in obtaining compensation from me. The order of the court on conclusion of that issue would be in the form of a fine, but the direction would be that the fine be paid into the registry of the court for your use and benefit. To such proceedings in contempt there was not the slightest element of opprobrium. The proceeding was purely and simply remedial and compensatory, and it was entirely a private remedy in which the public had no interest or concern."

Mr. Justice Brown assented to my statement of the law and said he believed it was the correct practice.

I said that the complaint made against Mr. Bessette in the circuit court at Indianapolis was a complaint for violating an injunction, and it was just such a complaint as would have been made against the transgressing party in the illustration stated in answer to the query put by Mr. Justice Brown. But

Bessette was not a party to the suit and was, therefore, not compelled to perform the decree of the court, as a party to the decree would be compelled to perform it. But while Mr. Bessette, in the eye of the law, was not compelled to perform the decree of the court, he was compelled to respect it, because all citizens were compelled to obey the law, and in the particular case a judgment of the court was the law, at least as between the parties, and a stranger had no right to interfere.

If such interference occurred a stranger to the record might be punished for contempt, but it was not the same character of proceeding in contempt available to the complainant as against the party to the suit. The charge of contempt as against a stranger to the record arose out of his obstructing the administration of justice between the parties to the suit, and if he were to be arraigned he must be arraigned, not for the violation of the injunction, which was technically an offense that could be committed only by a party to the record, but he must be arraigned on a charge of obstructing the administration of justice. The two classes of contempt were entirely separate and distinct, not only in their nomenclature, but in all their attributes and qualities. As against the stranger to the record the proceeding was in itself punitive to compel respect for the courts and compliance with their efforts to administer justice.

It was then that I pointed out many of the distinctions which existed between the two remedies, the one as against a party and the other as against a stranger to the record, and demonstrated that the two methods were not and never could be substituted for one another.

In the proceeding against party the purpose was compensation. In its nature the proceeding was entirely remedial, civil, and private. Upon a trial of the cause oral evidence was properly taken for the purpose of ascertaining the extent of the injury inflicted. Upon the issue of damages the defendant was entitled to the cross-examination of the witnesses, to the production of books, and to every other method of the law whereby the extent of honest liability might be correctly ascertained. In such a case a Federal court could not have jurisdiction unless there was diversity of citizenship between the parties or some Federal question in issue, and upon the hearing the defendant might challenge the right of the court to enter the decree which was claimed to have been transgressed. The judgment when entered became the private property of the complainant, and such a judgment could not be released by a pardon of the President any more than the President could transgress any other property right of a person.

If, however, the proceeding was against a stranger, then the injury or damages sustained by the complainant became immaterial, the production of witnesses was not permitted to prove it, and there was no right upon which the cross-examination of witnesses could be predicated. The sole issue before the court in such a case was an abstract one, namely, Had there been a disrespect for the orders and processes of the court which had tended to obstruct the administration of justice? Upon the court being satisfied that there had been a disrespect for the court's orders, then it was the duty of the court to ascertain the intent of the offending party, and this was done by submission to him of interrogatories upon which he was not permitted to challenge the right or authority of the court in entering the original judgment, but he might show that he intended no disrespect: that what he did was merely the accomplishment of a right of his own, which was special and substantial, and not at all involved in the decree of the court.

If the answers to interrogatories were on their face sufficient to show that the offender, though he had disregarded the order, had not done so disrespectfully, it was the duty of the court to discharge him, and if the answers were false, it was the duty of the Government to prosecute the offending party for perjury upon indictment by the grand jury and a trial for the crime.

In such a case the jurisdiction of the court was not in the least affected by the place of residence of the parties, and it was not necessary that there be any diversity of citizenship. The jurisdiction of the court to punish depended wholly upon the venue of the place where the offense was committed. The fine in such a case did not go to the complaining party, but went to the United States, and its object was to punish the offender and to furnish an example to others who might be likewise disposed that the processes of the court must be respected. Such fine was the subject of a pardon by the President.

I took up the Debs case, which I said was likely to be a dangerous precedent to persons who used the case as an authority without a close study of its char-

acter and of the functions which it sought to perform. In the Debs case the Government of the United States had gone as a civil litigant, not into the district court, which was the court of ordinary criminal jurisdiction, but into the circuit court, as a court of chancery, which was wholly devoid of any right to administer the criminal laws of the country. By its bills in chancery the United States averred that Debs and his associates had obstructed the highways of interstate commerce, which it was the duty of the Government to keep open for the use and benefit of all people and for the common welfare of the nation. The bill charged that the obstructions complained of were a nuisance, and it asked the court for the abatement of that nuisance, just as any civil litigant might ask a court of chancery to abate a nuisance which affected a right or duty of the complaining party. The court had entered its temporary restraining order, commanding Debs and his associates not further to continue the alleged nuisance until the cause could be finally determined.

It was subsequently represented to the court that Debs and his associates, who were parties to the decree, had violated the restraining order. Upon that issue the court heard evidence whereby it assumed to establish the damages the Government had sustained as a civil litigant, and, to compensate the Government, it made an order which was coercive in its character but nevertheless entirely remedial.

The dangers of the Debs case reposed in the fact that when fines were levied for the use and benefit of the Government they are usually punitive in their nature, and men were so accustomed to considering fines levied for the Government as punitive that they were likely to overlook the fact that in the Debs case the relief sought was civil and remedial and that relief was sought in a court which was wholly devoid of any criminal jurisdiction in the premises.

From the Debs case I read statements made in the opinion by Mr. Justice Brewer, in which the court differentiated that cause from causes which have the attributes of a criminal proceeding.

The Supreme Court of the United States, in the case of Kearney, decided soon after the Government was established, had held that a contempt proceeding was criminal in its nature, but in the Kearney case the party was fined because he was a contumacious witness, and that there was no quality of damages or compensation involved in that issue. Because this court had said that the judgment in a case of contempt was criminal, many courts had therefore inferred that all judgments in all cases involving questions of contempt were criminal; but I asserted and cited many authorities to prove the point that the construction which such courts had put on the Kearney case was illogical and that if carried to its limit would result in a denial of justice. The illustration given in answer to the query put by Mr. Justice Brown was recurring to, and I said:

"Suppose in the case I stated in answer to the query put by Mr. Justice Brown, the court were to order the fine paid to the Government instead of to the complaining party, what would be the result? If the matter in issue were \$100, which rightfully belonged to the complainant and which the defendant had taken from the complainant, then if the court appropriated that \$100 to the Government it would, in fact, by its decree take \$100 of the complainant's money without due process of law. On the other hand, if the \$100 did not belong to the complainant it logically followed that it would belong to the defendant, and if the Government took that \$100 from the defendant it would then be taking the defendant's property without due process of law."

Many authorities were cited by me to show that contempt proceedings were within the protection of the provision of the Constitution concerning the due process of law.

Having established the premise that the charge made against Mr. Bessette was that he had violated an injunction, I contended that Bessette could not be tried on any charge other than the one made against him, and cited as my authority for that statement the declarations of Chief Justice Marshall in the treason trials of Aaron Burr. He said that under the authorities there could be no doubt as to the correctness of the principle declared by Chief Justice Marshall, and that if that principle were not the law of the land then the clause of the Constitution concerning due process of the law was entirely impotent.

Mr. Bessette having been arraigned on a charge for which he was on its face not liable, the circuit court at Indianapolis had no authority, when it became advised of the improvidence of the proceedings against Bessette, to undertake by the decree of the court to change the nature of those proceedings from the violation of an injunction to the obstruction of justice and thereupon to enter, not a remedial fine for the benefit of Conkey, but a punitive fine for the benefit of the United States and intended to punish the offender.

The questions certified by the circuit court of appeals involved the method of appellate procedure. In the punishment of crimes where an appellate review was sought, the method of procedure had always been as to the common law by a writ of error, so in this case the circuit court of appeals found itself confronted with a record in which a punitive fine had been entered in a civil proceeding, and the circuit court of appeals had, therefore, inquired of the court in effect: "Shall we determine this cause according to the nature of the judgment entered or according to the nature of the case upon which the judgment was entered?"

There was such a wide discrepancy between the nature of the accusation made against Bessette and the nature of the judgment entered by the court at Indianapolis that the question stated by the circuit court of appeals might seem absurd. The absurdity, however, was not attributable to the circuit court of appeals, because that court was dealing with a record as it found it and was obliged to state the conditions as they existed. If the procedure was to be determined not by the nature of the case, but by the form of the judgment, then the procedure would be determined by the errors of the trial judge and not by the rules of the law.

Alluding to the provisions of the Constitution which adopted as the basis of our judicial system the chancery and common law systems of jurisprudence as they existed in England, I referred to the acts of Congress and to the rules of the Supreme Court which sought to put in effect those principles of the Constitution and to conserve the distinctions in the procedure in chancery and common law. It was shown that in going from a lower to a higher court of chancery one was dealing not with a wheel of lottery, which at one turn might bring out a writ available only at common law and at another turn bring out a writ available only in chancery, but, instead of the wheel of lottery, he was dealing with the science of jurisprudence, which was an exact science, and which would be efficient in the administration of justice only to the extent to which it was an exact science.

The Debs case was cited as my authority for the statement that every court was to be the judge of all transgressions against it. In the Debs case a request had been made for a trial by jury, but the Supreme Court held that a jury was foreign to a court of chancery, and, therefore, to submit the issue to a jury would be to submit it to a tribunal against which no offense had been committed, and such a step could not be taken under the well-established principles of jurisprudence.

The limitations stated in the Debs case were controlling in this case; that the transgression complained of was one against a court of chancery, if there had been any transgression whatever. If required to defend a client in a court having authority to issue the writs and processes of a court of common law, then, notwithstanding the Constitution, the acts of Congress, and the rules of the Supreme Court, counsel was required to make his defense in a court of common law, though the transgression was alleged to have been committed against a court of chancery.

In that event the offense which stood against him in the court of chancery would remain undetermined. Such a method of procedure, submitting to a court of common law a transgression against a court of chancery, could not be permitted under the rule in the Debs case, which held that one tribunal should not be judge of offenses committed against another. Therefore the court of chancery was the one which should have, and which in fact did, determine the issue against Bessette; that the right of an appellate review was exercised by appeal as contradistinguished from a writ of error.

Many decisions by the Supreme Court were cited by me to the effect that the right to an appellate review was fixed and to be determined according to the nature of the principal case; if that principal case were in chancery, then all ancillary proceedings were in chancery, notwithstanding their nature, when considered apart from the principal cause. Many English cases were also cited, and showed that while the Supreme Court of the United States had in its distinctions acted consistently with the Constitution, and with the acts of Congress, and with the rules of the Supreme Court, yet many of the circuit courts of the United States had departed from the lawful method, and confusion had thereby been created which ought to be corrected in this case.

The argument was given close attention by all the judges. The analysis of the Debs case was watched with particular interest. At times Justices Holmes, Peckham, and Day interrupted on a particular point as the close of the argument approached, and in each interruption the justice forecasted the conclusion which the speaker was about to make.

Mr. LITTLEFIELD (in the chair). What organizations do you represent before the committee?

Mr. FURUSETH. I represent the International Seamen's Union of America.

Mr. LITTLEFIELD. That is all?

Mr. FURUSETH. Yes, sir; that is all.

Mr. FULLER. If it is agreeable to the committee, one of the gentlemen opposed to the bill would like to be heard so that he can get away, and it is entirely agreeable to us that he should be heard now. The arrangement was in the beginning that the advocates of the bill should be heard first, but, provided it is satisfactory to the committee that this gentleman should be heard now, we are perfectly willing.

Mr. LITTLEFIELD. I want to ask this question, Mr. Fuller: Did it appear on the record as to which branches of the labor organization you represent in advocating H. R. 9328?

Mr. FULLER. I do not know that it did. I represent the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen, the Order of Railway Conductors, and the Brotherhood of Railroad Trainmen.

Mr. LITTLEFIELD. There seems to be a little difference of opinion between you and Mr. Furuseth, and I wanted to get a notion as to whom the different men represented. You voice the sentiment of those organizations in connection with that bill?

Mr. FULLER. Yes, sir.

Mr. PARSONS. Mr. Chairman, I am managing the other side in this hearing, and I want to introduce Mr. Emile Twyeffort, representing the Merchant Tailors' Association, of New York.

STATEMENT OF MR. EMILE TWYEFFORT, REPRESENTING THE MERCHANT TAILORS' NATIONAL PROTECTIVE ASSOCIATION.

Mr. TWYEFFORT. I would not presume, Mr. Chairman and gentlemen of the committee, to trespass upon your time were it not that I have been instructed by the organization of which I am a member to appear before your honorable committee and to lodge the protest of our organization against the amendment of the present so-called "injunction bill." In other words, we are in favor of the status quo. Personally I am only a worker. I do active work in my business. I measure, I fit, I cut. I can not, like the gentlemen who have preceded me, claim any oratorical qualities. I would simply state the case as I understand it—as a worker, an employer—for in this country the laborer of to-day is the employer of to-morrow. We have looked upon this existing condition as a condition favoring the law-abiding citizen in the conduct of his business. Were not such the case I should certainly not presume to appear before you to ask that the existing conditions should be maintained.

In listening to the arguments which have been put forth this morning I heard that the Administration—and I suppose that meant the President—favors this new bill, or these new bills, the numbers of which are H. R. 9328 and H. R. 4445, and I wondered upon what ground. But since listening to the essay of the gentleman who has preceded me I think that I have solved the question, because it is well known that the President is against race suicide.

Gentlemen, I do not know whether you see the connection, but, according to the essay of Mr. Furuseth, this nation is dying out, and I suppose it is because of the existing injunction bill. On the other hand, in the abstract, wages are going down, down, down. Well, that may be the case in some countries, but if we will turn to the census records we will find that race suicide can not be laid to the doors of this country, and we will also find that the labor interests, who constitute the majority of the depositors in the savings institutions, are accumulating a pretty nice little fund. That being the case, I would suggest that if the conditions which the gentleman described in other countries really exist, these other countries should adopt our present injunction bill.

But, all joking aside, for this is a serious question, gentlemen, I have been asked on behalf of our association to appear before you gentlemen to ask you not to destroy, but to upbuild. This present law has been tried, and, in our estimation, it has not been found wanting. Its operations have been productive of great good to this country. I might differ in my opinion perhaps with the gentlemen who have preceded me, but I consider that under this law an ex-President of the United States caused action to be taken which, in my estimation, was the proper step to take at the time in a situation which might have brought on a civil war, and which might have rent this country asunder. That is the way I look upon the present existing conditions, and I should be sorry to see the barriers let down—barriers which protect the law-abiding citizen, not only the employer, but the employee, who does not care to be entertained by some of the committees organized sometimes within the halls of those who call themselves “labor organizations.”

They prefer to work, sometimes, rather than to meet the entertainment committee, and it is also on behalf of those men that I appear before you; and I can claim to appear for them, for our shop is an open shop. We employ both union and nonunion men, and under our present conditions we pay higher wages than when we were organized under the closed-shop principle. Now, that statement could be verified. The census returns are there to prove it. I would say, Mr. Chairman, that there are a number of men who arrive from foreign shores, where they have had to struggle under conditions which do not exist in this country, and these men can not understand our laws, and I am sure that they are all in favor of these present bills, because, although the law exists against violence in every State, we know that justice very often miscarries, and that a violator of the law after the strike is declared off is often forgiven, and perhaps rightly so. But we also know that when a violator of the law is caught red-handed, he very often escapes his due punishment in the court of justice.

We could state a case—which perhaps does not come under the consideration of the present matter—of a lawyer who was convicted of murder in the State of New York three years ago, and who yet is very far from the chair. The law is very often slow. The law does not always do what it is intended to do. But when the court says, “You shall not do such and such a thing in violation of the law,” if, in face of that declaration, the lawbreaker violates the law, he is then brought up with a round turn; and I believe that is just, and that is one of the reasons. I believe, why the present condition of statu quo is attacked yearly before your honorable body.

I appear for those who have enjoyed the benefits of this law, both employers and employees, and I ask you gentlemen not to be carried away by this wave which every once in a while seems to carry everything before it, but is often like some of our winds—it comes up and it goes down, and it very often shows destruction in its wake. I appeal to you, gentlemen, to uphold the law-abiding citizen in his desire in this country to work unmolested when he has the right to work, and I appeal to you to give him the right to appeal to the law for the protection which is his due, and which he receives under present conditions. Gentlemen of the committee, I thank you very much for these few moments which you have accorded me.

MR. LITTLEFIELD. Now, the opponents of the bill want to resume. Mr. Gompers, how much time do you desire?

MR. GOMPERS. I can not just tell. It all depends upon the patience of the committee, I suppose, as well as my ability to get down to what I have to say.

**STATEMENT OF MR. SAMUEL GOMPERS, PRESIDENT OF THE
AMERICAN FEDERATION OF LABOR.**

MR. GOMPERS. Mr. Chairman and gentlemen, I have had the opportunity of appearing before the Judiciary Committee of the House of Representatives on several occasions, and in favor of an anti-injunction bill. Much that I had in mind to say has already been said and is in the record and printed in the complete hearings before the Committee on the Judiciary of the House of Representatives on the bill H. R. 89, entitled "A bill to limit the meaning of the word 'conspiracy' and the use of restraining orders and injunctions in certain cases," January 13 to March 22, 1904.

MR. LITTLEFIELD. Was that the Grosvenor bill?

MR. GOMPERS. Yes, sir.

(At this point Mr. Twyeffort went out of the door of the committee room.)

MR. GOMPERS. Before Mr. Twyeffort leaves I would like to make some reference to the remarks that he has submitted to the committee.

MR. LITTLEFIELD. Is that the gentleman who has just left?

MR. GOMPERS. Yes, sir. That is the reason that I mentioned his name, in the effort to attract his attention.

THE CHAIRMAN. He has just gone out. We have not any power to keep him.

MR. GOMPERS. I thought that I might attract his attention by mentioning his name rather loudly. The burden of his statement and appeal to this committee was to maintain existing conditions. I think that all through history you can find that same appeal and plea made by everyone who profited by the unjust conditions which obtained at that time. Those who profit by injustice, those who profit by maladministration, those who profit by unjust laws, those who profited by human slavery, in all cases and in all ages have urged those in whose power it was to make a change, to "maintain the existing conditions." It has been the repudiation of such claims that has made for the progress of the world, and that has established even the Republic of our country.

Every corrupt politician, every overweening boss, every greedy corporation, every discriminating railroad, every trust, every man who

profits from a wrongful condition of affairs will urge the advantage of maintaining existing conditions.

I should have liked very much to have had the opportunity of asking Mr. Twyeffort to which law he referred when he asked this committee to maintain the present law, which he said "has not been found wanting" and which has been found to accomplish so much.

Referring, then, to one part of the charges and insinuations and innuendoes that are often made against the representatives of organized labor—and when I say the representatives of organized labor I maintain that in truth they represent nearly all labor, for in every time when workmen are engaged in any dispute of whatever kind, however docile they may theretofore have been, when that dispute reaches a stage where work ceases and there is a lockout or a strike the workmen know where to go in order that they may receive some sympathy, some advice, some cooperation.

You will readily understand, Mr. Chairman, that as the proponents of the bill, of the propositions before you, and having been required to advance our reasons for the enactment of an antiinjunction law, we must anticipate that which will be urged against our contention, and we have good reason to assume that, largely, that which will be said has already been said in some other way and time, and I doubt whether, except that we may find the statements couched in different language, they will not all have their basis upon that which has been said before, that which has been presented before. The essence of the question has been very amply set forth in the discussion of the question by Mr. Furuseth, who has addressed you this morning. I should say now that we—and I speak as a representative of the American Federation of Labor—are not in favor of that which Mr. Fuller has called the administration bill.

Mr. LITTLEFIELD. By the way, Mr. Gompers, what organizations do you yourself represent at this hearing, and for whom do you speak?

Mr. GOMPERS. The American Federation of Labor, the federation of the organized workmen in the national and international trades unions other than those represented by Mr. Fuller.

Mr. LITTLEFIELD. Mr. Fuller's organizations are not federated with yours?

Mr. GOMPERS. They are not. There is a joint, common policy, but they are not affiliated to the American Federation of Labor, as are nearly all the other international trades unions.

Mr. LITTLEFIELD. That is, in a legal sense they are not a part of your body?

Mr. GOMPERS. Yes; so far as we are a law unto ourselves.

Mr. LITTLEFIELD. Yes; of course.

Mr. GOMPERS. But it is not a law of the country.

Mr. LITTLEFIELD. Of course. But is the organization represented by Mr. Furuseth federated with your organization?

Mr. GOMPERS. Yes, sir.

Mr. LITTLEFIELD. They all oppose H. R. 9328?

Mr. GOMPERS. Yes; and are in favor of the Little bill.

Mr. LITTLEFIELD. I simply ask this as a general question. Do your organizations indorse the severe restrictions placed upon H. R. 9328 by Mr. Furuseth?

Mr. GOMPERS. We are opposed to the bill; whether in the exact language of Mr. Furuseth or not is not the question.

Mr. LITTLEFIELD. Yes.

Mr. GOMPERS. But we are apprehensive—yes, sir—of that bill, and we have grave reasons for being apprehensive.

Mr. LITTLEFIELD. Mr. Furuseth had some very vigorous opinions. I did not know whether you entertained or shared with him in those.

Mr. GOMPERS. I share them very largely.

Mr. LITTLEFIELD. Yes.

Mr. GOMPERS. I only had the opportunity of casually hearing them, and hence I am not in a position to say whether every word in what Mr. Furuseth said meets my indorsement.

Mr. LITTLEFIELD. Oh, yes; of course not.

Mr. GOMPERS. But the essence of it meets my indorsement.

Mr. LITTLEFIELD. Very well.

Mr. GOMPERS. We are apprehensive of bills of that character. We have reason to feel that apprehension.

I have not the slightest doubt but what Mr. Fuller and my fellow-workingmen and fellow-unionists whom he represents really believe that that bill is a good bill, and that it will accomplish some of the purposes to limit the issuance of injunctions in labor disputes. But the fact of the matter is that it will not. We fear, and have good grounds of fearing, that there are in that bill the elements of the greatest danger to the interests, to the rights, to the liberty of the American workingmen. I said that we are apprehensive.

Let me give you one or two of our reasons for the apprehension that we feel for all matters of this character. At the time when the so-called Sherman antitrust law was enacted, at the time when the interstate-commerce law was enacted, we were some of us apprehensive then that by some process of reasoning the courts would make the provisions of those laws apply to the workmen engaged in organizing and who were attempting to improve their material condition by organization.

We were pleased beyond measure that during the entire discussion that subject was not mooted. We were relieved somewhat, under the belief that after all it was the great combines in the products of labor and in the distribution of labor products which were aimed at, and that the workmen who were engaged in the effort to organize were not included and would not be included and against them it would not be made to apply. But that law was not upon the statute books six months before its very terms were applied to the organizations of labor, and it is only within the recent past that any attempt has been made to have it apply to the trusts and corporations and companies to which it was at first intended to be exclusively applied.

Our further apprehension, and perhaps one of the great causes for our apprehension, is this: At a time when an amendment was pending in reference to the antitrust law, we, the representatives of labor, if you please, who try to keep informed as to what is attempted to be done by Congress, and who were aware of the differences of the interpretations of the courts of existing law, and applying these interpretations to organizations of labor, asked Congress to make a part of the bills then pending a provision that—as my memory serves me—substantially was this: “That the provisions of this bill or this act, and the act to which this is an amendment, shall not apply to the organizations and associations of labor instituted for the purpose of regulating wages, hours, and conditions of employment.”

In other words, to exclude the organizations of labor from the operation of the existing law and of the proposed amendment to the antitrust law. The amendment was rejected by the committee of the House having that bill in charge.

The House adopted the amendment, and then the bill was killed. Nobody wanted the bill after it had the amendment excluding the organizations of labor from the operations of the antitrust law. And I think it goes without saying that it was not in the mind of any man who advocated or voted for the passage of the antitrust law that it was intended to apply to the organizations of labor; that it was intended to apply to others than the corporations and the railroads and carrying companies and other organizations of capital which were in their very nature corporations or trusts.

Mr. BIRDSALL. Just a moment right there, if it will not bother you. If I understand you, the sum of your apprehension is this, that this law, if passed, would recognize an authority or a power in the court the existence of which you now deny?

Mr. GOMPERS. Yes, sir.

Mr. BIRDSALL. By implication?

Mr. GOMPERS. Yes, sir. We contend that there is not now upon the statute books of the Federal Government one line that by its fair interpretation is a warrant for the issuance of any one of these injunctions. And so long as there is no law upon the statute books authorizing the issuance of injunctions, it at least places in our power the right to protest against that issuance and to demand from Congress a clean-cut proposition.

It is too valuable a possession and one of too much power to surrender for a thing of that sort, such as is proposed to be enacted. It is not worth it. Even if it would yield something of that which its advocates believe it would, it is not worth it, sir. And, on the other hand, it would create a condition of affairs that would very seriously injure the cause of the material and social and moral health of the working people of our country.

I ought to say that I regret very much to appear as if differing from my friend Mr. Fuller—and I use that word with all the sincerity of that term—for I have found him to be painstaking, honest, and straightforward and loyal and faithful to the interests of the men he represents, and I do not believe that he would advocate a bill from which he does not seriously and sincerely hope for some beneficial results, and I therefore all the more regret to be compelled to differ from him in this proposition which he advocates, and I think that we can gather from his remarks this morning that, although he is somewhat, or practically, committed to the Administration bill, yet I say you will be doing yourselves more intelligent credit, as well as doing the workingman a greater benefit with less injury and injustice to anybody on the American Continent, by favorably reporting the bill this committee once reported, and that is the bill introduced by Mr. Little.

You will observe, gentlemen, that under the operation of the issuance of the injunctions, the very things which we might do as men and as citizens we are denied the right to do as workingmen. The injunctions treat us as a class; the injunctions apply to us as workingmen, and apply to no other members of our common country. In one of the injunctions issued by a judge he enjoins working peo-

ple from doing everything whether "herein mentioned specifically or omitted."

"The men named in the injunction and their cooperators, their associates, and conspirators, to the affiant unknown." That means the whole world who might be associated with these men in any way, however remote, are enjoined from doing anything specified in the injunction, or anything else that is omitted in the injunction.

Mr. LITTLEFIELD. What case is that, Mr. Gompers?

Mr. GOMPERS. It is about page 20 of the last year's hearings. It is the Kansas and Texas Coal Company, of Huntington, Ark., and the judgment, this injunction, was issued by the Hon. James H. Rodgers, United States district court, on the 22d of April, 1899.

Mr. LITTLEFIELD. Give us the volume and page of the Federal reports.

Mr. GOMPERS. I have not that here now. I should say that the injunction in its entirety is printed in the hearings to which I referred in the opening of my remarks.

Mr. LITTLEFIELD. That is a hearing already had before this committee?

Mr. GOMPERS. Yes, sir. I quote from a comment that I made in that hearing.

Mr. LITTLEFIELD. Oh, yes.

Mr. GOMPERS. And an extract from the injunction which I later submitted to the committee and which is found in this volume of hearings.

Mr. LITTLEFIELD. I think I have the case here. I find the injunction printed here, the preliminary injunction in the case of The Kansas and Texas Coal Company against William Denney and others. This is on page 34 of the report of the circuit court of the western district of Arkansas, Fort Smith division. That does not seem to be dated in the report. Have you a memorandum of the date there?

Mr. GOMPERS. April 22, 1899. In one of Judge Rick's injunctions the words occur—the men are enjoined from doing several things, among others criminal acts, unlawful acts, and then he says: "Or otherwise obstructing, interfering with, hindering, or delaying any of the employees of such railway company engaged in the transportation of coal."

You will observe that the enjoining of men from committing any criminal act we contend is an improper exercise of the power of the equity court, yet some of our opponents would have it appear that we favor criminal acts, or that we favor their commission.

But we contend that the writ of injunction was never intended to be issued to enjoin men from committing any unlawful or criminal act; that both our country and our States provide for the apprehension and the trial by a jury of persons who commit such acts to ascertain whether such person has been guilty of a criminal act and to punish him if he is found guilty, and that organized civil society has constituted a police force, large or small as the circumstances may warrant, for the apprehension and prevention of any criminal act, and that it is hardly fair to put it as has been stated by the opponents of our injunction bill, which your committee reported favorably, and which the gentleman who just preceded me stated in his very brief remarks. But the essence of the opposition and the pur-

pose of the opposition is made clearly manifest by him. It is to avoid the jury trial.

And you will observe in these provisions of the injunction of Judge Ricks, where he says "otherwise obstructing, interfering with, hindering or delaying any of the employees of said railway company engaged in the transportation of said coal." It is immaterial whether that be an unlawful act, a crime, or a simple question that one man may interpose and ask another. It is delaying him; it is interfering with him in the performance of his duties as to transporting said coal.

Mr. LITTLEFIELD. Before we suspend for lunch I have here this preliminary injunction to which you have referred, and I have been very hastily running my eye over it. I do not find the language that you quote in the connection in which you think it is found. I wish during the intermission you would look it over and see if you can find it. The thing which comes the nearest to it that I can find occurs on page 39 of last year's hearings. I will read this:

"And you and each of you are hereby commanded that you do de-

frain from doing or causing to be done or aiding or abetting in doing or causing to be done any of the acts or things herein recited, or interfering, or injuring, or attempting to interfere with or injure any of the property herein mentioned—

Now, here comes the language which I think you may perhaps have had in your mind—

or any other property of the Kansas and Texas Coal Company, whether herein mentioned specifically or omitted.

And the general language that you quoted in this connection simply relates to the indefinite acts to be done. I wish you would look it through. I may be entirely wrong about that.

Of course we will continue this hearing this afternoon in any event, but I would like to inquire of the gentlemen upon the other side and of Mr. Fuller about how many gentlemen you have that would like to be heard in addition to Mr. Gompers. That may be perhaps somewhat simplified.

Mr. FULLER. I do not know of anybody else to be heard except the Hon. Mr. Gilbert, who introduced one of the bills.

Mr. GILBERT. I will not take over three or four minutes, Mr. Chairman. I simply want to make a short statement to the committee.

(Informal discussion followed.)

Mr. GOMPERS. Before you determine this finally, may I ask whether, if the proponents of anti-injunction legislation deem it necessary to be heard after the other side has gotten through, we may have the opportunity of being heard briefly in answer to them?

Mr. LITTLEFIELD. You want to be heard in reply?

Mr. GOMPERS. Yes, sir.

(At this point the committee took a recess until 2.30 o'clock p. m.)

AFTERNOON SESSION.

The committee reconvened pursuant to adjournment, Hon. Charles E. Littlefield (acting chairman) in the chair.

Mr. LITTLEFIELD. Mr. Gilbert, the author of the bill H. R. 9328,

as something else to attend to this afternoon and wishes to make a short statement at this time in regard to the bill, if it would be agreeable to you, Mr. Gompers.

Mr. GOMPERS. Entirely agreeable, Mr. Chairman.

**STATEMENT OF HON. NEWTON W. GILBERT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF INDIANA.**

Mr. GILBERT. Mr. Chairman, I introduced one of the bills which I understand is under discussion here, and I find that it is attracting great deal of attention over the country. In fact, I have received letters and telegrams from many of my constituents and from people of my State protesting against the bill, but evidently upon the theory that it provides for something that it does not provide for. I wish this committee to understand that I am an ultra man on the proposition of the anti-injunction bills that have been proposed from time to time. I believe absolutely that the courts should have the power of granting injunctions.

But my bill—and I want to call the attention of the committee to it—does not seek in any sense to impair the right of injunction; but it does do what it seems to me is the American thing—it provides that before a judgment can be rendered—a judgment or injunction, if you please—against me, that I must know that an injunction is sought. I may be wrong, but it seems to me there is no principle upon which we can defend the proposition that a judgment can be taken in a court against a man without his knowledge—constructive knowledge at least. So that my bill provides only that notice shall be given to one against whom an injunction is sought. It provides not for notice of a definite time, but for reasonable notice—notice, which it seems to me, if I understand the interpretation of the word “reasonable” in the courts of our country, might vary a great deal.

As I understand the word “reasonable,” it is such that if the circumstances demanded short notice, very short notice, and immediate bringing into court of the defendant that that might be done. But as strong a believer as I have always been in the power of the injunction, I have never been able to conceive how a man should have judgment or injunction issued against him without notice that the proceeding was to be had. For that principle I contend. For that principle the bill was introduced. As to the precise wording, the wording was drawn exactly in line with the words of the President, using almost his exact language in his message sent to this Congress, and because that language was used in the drafting of this bill the language which appears in it was used.

I do not contend for the language, but I do contend for the proposition that there should be no injunction without notice, and therefore being able men representing very large interests from all over this country appearing on both sides of this proposition, I do not desire to take up any more time of the committee; but I did hope to be able to make that statement as to my position, because I have been considerably annoyed by seeing in the public prints these statements and receiving letters and telegrams stating that I had introduced a bill directly against the power of the injunction.

Mr. LITTLEFIELD. Do you care to make any suggestion in relation to the suggestions of Mr. Furuseth and Mr. Gompers that this bill

in effect confers powers upon the courts that they do not now possess, and is therefore objectionable?

Mr. GILBERT. I did not hear what they had to say. I will say this, that in my individual judgment my bill is too narrow. It was narrowed down, not in accordance with my best judgment, but it was narrowed down to injunctions which pertain to labor disputes. I would be glad myself to see the committee or the House amend it so as to apply to all injunctions. But that was done so as to bring it within the line of the recommendation of the President.

Mr. FURUSETH. With reference to that, the gentleman has already answered one question that I was going to ask—namely, whether he wanted generally the injunctions not to be issued until a hearing could be had. Now, assuming that you own a piece of property, and a railroad corporation or somebody else is about to take it from you by laying a track over it, or using it, or taking the quarry out of it, or taking the forest off of it, it being your real property, do you believe that there must be a hearing before the trespass upon that property of yours is prohibited?

Mr. GILBERT. Yes; there should be a hearing. There must be notice given. That is, that is my judgment; else you may take judgment against a man, else you may enjoin a man for something that he has never heard about or thought of doing or dreamed of doing.

Mr. FURUSETH. Then, by a hearing you mean simply the filing of a notice that it is done?

Mr. GILBERT. I am not talking about a hearing. My bill provides for notice here.

Mr. FURUSETH. Notice to the opposite party?

Mr. GILBERT. Notice to the one against whom the injunction was sought. That is all there is in my bill, as I read it. If there is anything else in it, then I do not understand my own bill; and it seems to me that is right.

Mr. SPALDING (representing the Typothetæ of Philadelphia). I desire to know whether Mr. Gilbert is aware that his bill is drawn in the exact language of the existing equity rules of the Supreme Court of the United States?

Mr. GILBERT. I am not aware of that. I am aware that it is not drawn in conformity with the practice of all of the courts. It is in most of the courts. Most of the courts of the United States do just what my bill provides, and there have been instances—I think I am correct—in which that has been done.

Mr. SPALDING. But you did not know that you were following that exact language in this bill?

Mr. GILBERT. No, sir. I do not know it now.

Mr. SPALDING. That is a fact.

Mr. GILBERT. The present equity rules?

Mr. SPALDING. The equity rules of the Supreme Court of the United States have exactly that language in them, except that it applies to all cases. This is limited to labor disputes, and it is subject to modification in particular cases. The objection is that this bill will make binding upon the courts in every case that general rule which is now subject to qualifications in some particular cases.

STATEMENT OF MR. SAMUEL GOMPERS—Continued.

Mr. GOMPERS. Since Mr. Gilbert has made the statement he has, I want to say at this time that the representatives of labor appearing for and advocating the enactment of an anti-injunction bill, and an effective one—I want it to be clearly understood—neither directly nor indirectly nor remotely aim to attack the writ of injunction as a writ. We recognize its importance and its value and efficiency and appropriateness and effectiveness within the limits of its original purpose, and that is to protect property rights when there is no other remedy at law.

I should say, too, that it is quite news to me, although I am not surprised by it, that Mr. Gilbert should have received numerous protests against that bill, his bill, H. R. 9328; for, as a matter of fact, if there is any one thing upon which there is perfect clearness in the minds of the workmen of the United States, it is upon this subject of injunctions, and I do not think that they can be easily persuaded to another course than what they have in mind, and that is an effective bill that shall remove the condition that has selected them as workmen specially to have injunctions issued enjoining them from doing things that applies to no other man, woman, or child.

Mr. FULLER. Before Mr. Gilbert goes out I want to have an understanding and ask him a question. I think there is a misunderstanding.

(Mr. Gilbert was in the act of passing out of the door of the committee room as Mr. Fuller commenced to speak.)

Mr. GOMPERS. I wanted to say, though, that if he has received the protests to which he refers, then they have not been artificially stimulated or suggested, for the American Federation of Labor officers and the legislative committee are expected to keep the workmen of America advised as to the progress of legislation affecting their interests, and nothing of that sort affecting this bill has yet gone forth, and I simply make this statement as indicating how rife and general is this consensus of opinion on an accurate and effective injunction bill upon the workmen of our country.

And I want to add further, in view of the statement made by Mr. Gilbert, that the language of this bill, as well as the language contained in the President's message, was based upon a bill that was introduced into Congress in the last session. These things are not original with this bill, nor are they original with the President in his message. It fell to our duty last Congress to oppose that bill, as we now oppose it in this session, and to ask that H. R. 4445 be reported upon and passed. I find upon examination that the language used in the injunction of Judge Rodgers applies to property specified, property in that injunction specifically mentioned or omitted, not to personal actions.

Mr. LITTLEFIELD. So that the original reference was erroneous in that respect?

Mr. GOMPERS. Yes, sir; and I will say that there was no intent—it was in the hurried reading—

Mr. LITTLEFIELD. There is no impression that it was, Mr. Gompers. We simply wanted to get at the facts, so that the record would be consistent all the way along.

Mr. GOMPERS. Yes, sir. I commend to the attention of the members of the committee the injunctions that are incorporated in the report already printed, and to which I have referred, and I want to say that the subsequent injunctions that have been issued by both Federal and State courts have simply gone step by step, reaching to greater lengths, and dealing with things that are the most ordinary affairs of man. Trespass, unlawful acts, criminal acts; no one can defend them and claim honest citizenship in our country.

But the doing, as I say, of the most ordinary things that men do in their everyday lives are more and more coming to be touched upon by injunctions. One injunction was issued—or, rather, many injunctions were issued—prohibiting persuasion, and not even designating what kind of persuasion. We can understand that there is such a thing as persuasion glibly used by the tongue and a club held in the hand; and no one can at all justify such persuasion as that. But even so, in such a case the injunction should not lie, because such an attempt is a threatened assault upon the person, for which there is a law to prevent, to apprehend, to try, and to convict and to punish. But there is a persuasion—that persuasion which is commonly understood in our language—which no man can deny the right to exercise by another.

And then comes the inhibition of a man or a number of men from weaning away from an employer those who are in his employ. "Weaning away!" Is there any unlawful conduct if you, in your own interest, can wean away from me a man employed by me? Weaning away from me a man who is valuable to me in my business. By what? By bribes? By payment of money? By promises of reward, by advancement, by advantage? Is not that your right? If it is your right, is it not mine?

Take a case in point. A strike occurs. Men leave the employment of a certain firm because they ask for a high wage, or protest against a cutting of their wage, and another man or men take the places made vacant by the strikers. The strikers, having had experience, have accumulated certain funds, and they approach the men who have taken their places, and say to them, "John," or "Gentlemen," or "Men, you are taking our places. You have taken our places, and you are doing yourselves as well as us an injury, for if we are defeated in our effort the wages will be reduced and stay reduced, or our effort to increase wages will not succeed, and you will have been the instruments to our defeat and to your own defeat and disadvantage.

"Come with us. Make common cause with us. We have accumulated funds, and we will pay you from what we receive from our associated efforts and our accumulated funds, either as much as you can earn, as much as we get, or we will pay you more than what you are now earning; quit the employment of that firm, and by reason of our common concert of action make that impression upon the firm that it will be required to yield and to withdraw the offer of the reduction of wages, or to concede the increase."

I hold that the workmen have the right to go to any workmen employed by anybody, whether in a strike-bound establishment or otherwise, and if such a workman has no legal contract with his employer, and it would not violate the terms of a contract, the associated workmen have the legal right to offer this man to quit his employment

and go to work with them in some other establishment, or not to work at all, for the time being. They have the right to "lure away" and "wean away" from an employer a workman, and to offer him money inducements, so that he may quit that employment and work for another, or to go idle for a period, in order that a certain lawful, honorable purpose may be achieved. And yet the injunction is issued against workmen for doing that very thing; and for doing it after the injunction has been issued they have been sent to jail.

Mr. FULLER. If it would not interrupt Brother Gompers, I wanted to just ask him a question here.

Mr. GOMPERS. Very well.

Mr. FULLER. Did I understand, Mr. Gompers, in speaking of the protests that Mr. Gilbert had received against the passage of this bill, that you understood he received them from laboring interests?

Mr. GOMPERS. No, sir; I did not.

Mr. FULLER. Very well; that is all.

Mr. GOMPERS. I did not; no, sir.

Mr. FURUSETH. May I ask you one question, Mr. Gompers?

Mr. GOMPERS. I should have preferred not to be interrupted, but I am interrupted now.

Mr. FURUSETH. You used the expression "as long as there is not a legal contract." I presume that you did not mean that there can be any legal contract to hold a man?

Mr. GOMPERS. No, sir; I do not mean that there can be a legal contract that can compel any man to perform personal service. Even in the law that would not hold. But on this point I am speaking of the morality of the question, not its legality.

Mr. FURUSETH. All right; that is all.

Mr. GOMPERS. I might burden the record with injunctions, which I have no purpose of doing. We object to the fact that our courts have read into the law new features. We are suffering from court-made law rather than statute law, and the purpose that we have in offering our bill, H. R. 4445, is that the law and its purpose shall be as it existed prior to the existence of these modern injunctions in trade disputes arising between employers and employed.

Mr. LITTLEFIELD. Have injunctions in that special particular to which you have just referred been sustained by the court of last resort, so that it may now be well said, so far as either side of the controversy is concerned, it has been finally determined as part of our jurisprudence that an injunction such as you have mentioned would be sustained?

Mr. GOMPERS. The fact is that there are few of these cases of injunction that are brought to the court of last resort.

Mr. LITTLEFIELD. In this special particular?

Mr. GOMPERS. No, sir; there is not.

Mr. LITTLEFIELD. So that the court of last resort has not yet determined that an injunction could be lawfully sustained under circumstances such as you have just described?

Mr. GOMPERS. Yes, sir; they have not.

Mr. LITTLEFIELD. Your proposition, as I understand it, is that in the inferior courts—the Federal and circuit courts—these injunctions have to a greater or less extent been issued including the proposition that you have just referred to?

Mr. GOMPERS. Yes, sir; and it has become quite general.

Mr. LITTLEFIELD. Yes.

Mr. GOMPERS. And it brings to my mind the statement made before this committee this morning that there are but a few of these cases in which a judge has gone too far. I think there are more than a few when even our opponents agree that some of the courts have gone too far.

Mr. LITTLEFIELD. I suppose that would be true of any kind of a question that courts undertake to decide. They are open to error.

Mr. GOMPERS. Yes, sir. And our contention is that there has not been one injunction that was issued that is not in contravention of fundamental rights.

Mr. LITTLEFIELD. Then you take the ground that they have not any power to issue injunctions anyway?

Mr. GOMPERS. Yes, sir.

Mr. LITTLEFIELD. That goes to the root of the whole matter.

Mr. GOMPERS. That is what we are trying to aim at.

Mr. LITTLEFIELD. That is one of the reasons that you object to the bill of Mr. Gilbert that indirectly confers a power that you say does not exist?

Mr. GOMPERS. Yes, sir.

Mr. TIRRELL. May I inquire, for information, whether you are aware of any injunction which ever has been issued simply for persuading the employee to leave the employment, or whether or not that injunction or all injunctions have not conjointly with that had intimidation or assault or some other alleged violation of the law attached to it in connection with persuasion?

Mr. GOMPERS. I would not insult the intelligence of the committee by asserting that an injunction has been issued upon the only feature of enjoining persuasion of or weaning away employees. But the things which are enjoined and which are in themselves unlawful I hold the courts should not issue injunctions against, because there is already a remedy for them at law.

Mr. TIRRELL. I understand.

Mr. GOMPERS. And it is not these violations of law for which men are held in contempt of court and punished, but it is these things, the persuasion and the weaning away, which are included in the injunctions, and which men can not help doing and do, and as a consequence they are guilty of violation of the injunction and are sent to jail, and the world condemns these men as having been guilty not of weaning away and persuasion, but as having been guilty of a crime.

Mr. LITTLEFIELD. I suppose you have the specific instances where the men have been punished for contempt for merely enticing men from their employment?

Mr. GOMPERS. Yes, sir.

Mr. LITTLEFIELD. So that you could put those in the record?

Mr. GOMPERS. Yes, sir.

Mr. LITTLEFIELD. I did not know but you had some right here now.

Mr. GOMPERS. Yes, sir.

Mr. LITTLEFIELD. Of those specific cases?

Mr. GOMPERS. I have some here; yes, sir. You asked me a moment ago as to whether any of the cases had been brought to the higher court?

Mr. LITTLEFIELD. No; the question that I asked you was whether the specific complaint that you now make in reference to injunctions having been issued, and to enticement, had been passed upon by the highest court, so that we could know whether it was a part of our jurisprudence, or whether it was only an action of an inferior court. I understood you to say that the specific question, as you understand it, never has been presented and determined in any court of last resort.

Mr. GOMPERS. Yes, sir; that is correct. But in connection with this, if you will allow me—

Mr. LITTLEFIELD. Yes; certainly.

Mr. GOMPERS (continuing). I would say that the case of *Bissett v. Conkey Company*, in Hammond, Ind., was argued before the Supreme Court of the United States. At the last hearings upon the injunction bills, which are printed, the case was referred to as having been determined by the lower courts and was then pending upon appeal to the Supreme Court of the United States. Hon. William Velpeau Rooker, the attorney for Bissett, appeared and made his argument, and the briefs, I think, are on file as part of the record. But he favored me by writing his review of the Supreme Court's decision in that case, and if it may be permitted, I should like to submit it and to have it incorporated in the record. It is, I think, a very valuable contribution to the literature and to the better understanding of the matters involved.

Mr. LITTLEFIELD. You can file and print that as a part of the hearings, and if there is no objection, it will be so ordered.

Mr. GOMPERS. We hold that the issuance of an injunction is an extraordinary remedy which is to be resorted to only when the end to be reached can be obtained by no other legal process.

That there is a legal remedy for the things which an injunction can enjoin goes without saying, but it is the purpose of the opponents of our legislation on this subject to get rid of the trial by jury in the regular process of the law. Their purpose is to make the judge who issues the injunction both the judge, the jury, and the executioner, and, indeed, to take away from the workman enjoined the constitutional right of being tried before a jury of his peers for any crime or unlawful offense with which he may be charged.

Mr. LITTLEFIELD. Do you go so far as to contend that the courts have not any fundamental power or rightful power to issue an injunction to restrain an unlawful act, distinguished from a criminal act?

Mr. GOMPERS. I say—

Mr. LITTLEFIELD. I suppose that you recognize that there is a distinction, and there may be many acts which may be unlawful without being criminal. Does your proposition go as far as that?

Mr. GOMPERS. So long as it involves personal liberty; yes, sir.

Mr. LITTLEFIELD. Of course, as the result of an action of tort a man's personal liberty may be restrained. A man might be arrested.

Mr. GOMPERS. Where it is affecting property I am in entire accord with the best conception of the writ of injunction; but when it involves personal liberty, the freedom and the exercise of lawful rights guaranteed to the citizen, then we hold that under no circumstances should the writ of injunction apply; and, further, it does not apply except to workmen when engaged in a dispute with employers.

Mr. LITTLEFIELD. I do not know as I quite get your distinction. As I understand the writ of injunction anybody who violates that order of court is guilty of contempt, and his personal liberty is quite likely to be restrained. I think that applies to all injunctions.

Under what circumstances do you conceive it is proper for a court to issue an injunction in the case of an unlawful act in any instance? Or do you hold that wherever the act is unlawful it should not be used? If you concede that the writ of injunction is a proper writ, under what circumstances, according to your conception, can it be properly used? Any issuing of the writ, if it is violated, is bound to be followed by the same consequences as follow its issuing in the case of a labor controversy; that is, as to the results of it. The reason of its issue may be different.

Mr. GOMPERS. But the fact is that in all other instances the personal constitutional liberty, the personal liberty of the person enjoined, is not involved in the issuance of those injunctions outside of a labor dispute.

Mr. LITTLEFIELD. You mean in its origin, I take it?

Mr. GOMPERS. And practice.

Mr. LITTLEFIELD. Let me illustrate. I want to get your idea of the legal proposition. Suppose an injunction is issued to restrain a plaintiff from prosecuting an action at law; that is, from initiating a proceeding, as is often done. Now, if he brings his action, he is in contempt, and exactly the same kind of contempt that a labor organization or a laboring man would be in if he or they saw fit to go on and violate a writ of injunction. He gets the same consequences exactly.

He may be imprisoned or fined exactly as the wage-earner may be. The origin of the injunction, of course, is different. It is not a crime to prosecute an action at law. But the wage-earner may be enjoined because he may be about to commit a crime. The consequence is the same if he violates it. Your proposition, as I understand it, is this—I do not want to disturb you in your argument, but I do want to get a clear comprehension of your idea—you say that the origin may be different; but the circumstances under which the punishment is inflicted is where you make your distinction, is it not?

Mr. GOMPERS. I think your question is a very long one, and I can not be circumscribed by a definite answer—yes or no.

Mr. LITTLEFIELD. Certainly; you are at perfect liberty to answer as you choose. I desire to have you go right along and put your proposition in your own way, but I wanted to get in my mind what your legal proposition was. But if I disturb you, I will not put the question.

Mr. GOMPERS. You do not disturb me, sir; but the question is a very long one. I will try to answer it. I tried to keep up with you in my mind and to understand the proposition that you submit.

Mr. LITTLEFIELD. Yes.

Mr. GOMPERS. If a man undertakes or proposes to undertake to complain against another or to institute a suit against another, it is to obtain financial redress and restoration of property or to secure a mulcting of him in damages. The principle involved is a matter of property rights and does not involve his personal liberty. Even when the man who anticipates becoming a complainant in a case is enjoined by a court, the party at whose instance the injunction is ob-

tained must put up a sufficient bond to indemnify the party enjoined that he will be fully insured against any injury resulting by reason of his being enjoined from proceeding as he desires. Now, I am not a lawyer, and I may not be able to contend with a distinguished lawyer, and I yield most humbly and as gracefully as I know how to the superior legal knowledge of the chairman. But there are certain things that have been ground both the right way and the wrong way in my make-up, and against them no legal training can shunt me off my track.

Mr. LITTLEFIELD. There is no desire to do that, and I do not think that you have the slightest trouble in explaining yourself and expressing yourself. I just wanted to get at the legal proposition—that is, from your point of view.

Mr. GOMPERS. This is a question involving property and property rights and not personal liberty, and it is the personal-liberty feature to which I am addressing myself.

Writs of injunction, in so far as they enjoin acts forbidden by law, are superfluous, erroneous, and unnecessary, and they have no function to perform. In so far as writs forbid acts which the law does not forbid, they are erroneous, and their future issuance should be prohibited by the enactment of our bill, H. R. 4445.

I want to say a word in regard to the Constitution. I am not a believer in that sort of politics to which the phrase has become associated, "What is the Constitution among friends?" because I think that while there has been too much of that sort of thing, yet I do believe, as I tried to indicate at a former hearing, that the Constitution of our country will become enlarged or narrowed in the same ratio that the people of our country show their earnestness and willingness and determination that their rights and their welfare be protected.

But it is not difficult to imagine that the Constitution is usually interpreted and enforced as the expression of the will of those who for the time being are in power. The opponents of our bill are not only opposed to it because it would accord to us equal rights with every other citizen of the country. They know that in opposing this bill they are standing for the inequality before the law of the wage-workers when engaged in any labor dispute. They are opposed even to the organizations of labor. They are opposed to the workingmen organizing. Why, in the hearings before the committee composed of your predecessors, upon the public platform, in their business meetings, in their official journals, in their speeches everywhere and anywhere it is the same thing.

They are opposed to everything for which the labor movement and the labor organizations stand. They are opposed to the collective bargaining; they are opposed to conciliation; they are opposed to the policy of arbitration. If you will examine the arguments made by the opponents of this bill, H. R. 4445, you will find the statement made that they are opposed to these things, and ask the American workman to stand as an individual and assert his rights and stand for what he can get, as if an individual workman can secure any recognition, any redress in a modern industrial plant, when the great industries of the country are concentrated, when wonderful plants, great machinery costing immense sums of money are required to operate the plants, and the workmen have lost their individuality as soon as

they enter the plant and secure their employment, and can secure economic and social recognition only by the association of themselves with their fellows.

They say, "Yes; make your workmen in your unions better men. Make them benevolent societies." Yes; make them benevolent societies. And some of our friends would have no objection to make contributions toward them, and with every contribution made cut wages and increase the hours of labor.

Mr. LITTLEFIELD. A sort of a Standard Oil proposition?

Mr. GOMPERS. And not only that, but these railroad and other corporations and street railroads and these beneficent philanthropic employers, who introduce all this sort of things for the purpose of weaning away the workmen from the unions, with the knowledge that their isolation from their fellow-workmen who would otherwise consider the difficulties that affect them as workmen, and their interests, would fritter away their time in saying nice things of each other and patting the other employers upon the back and sounding in laudatory terms their philanthropy and good wishes to their workmen, while they, the employers, would be still cutting their wages further. They want a union of workmen to be patterned after the fashion that the Sultan of Turkey hires a man to take care of his harem.

The idea of an opponent of this bill declaring that the organizations of labor are destroying all liberty of contract between the employer and the employed! Imagine a man walking into one of the plants of the United States Steel Corporation and offering to make a contract with the company for his labor. Imagine a switchman or a maintenance-of-way man, a track man, going up to the superintendent of the Pennsylvania Railroad Company and asking him to enter into a contract between himself and the company regarding his labor, wages, and conditions of employment.

It is an insult to intelligent men to ask them to seriously consider such an argument against the organizations of labor and the purposes for which they stand. Higher wages? Yes; higher wages, surely. Who are more entitled to get a larger share out of the products of labor than the workingman—a larger share than they are now getting?

We will have our unions, but not as some of our friends would have them, as I have already designated. But here let me say that a few months ago the Czar of Russia issued his famous ukase in which he, among other things, extended to the people of that country the immutable foundations of liberty based on the real inviolability of personal freedom of conscience, speech, union, and association; and not only proclaimed for Russia, but for Finland and the entire Russian domain.

We ask, Mr. Chairman, for nothing extraneous, nothing that is unjust or improper. We want no immunity from the law for any crimes or unlawful conduct of which any man in the labor movement may be guilty. I grant you that here and there some man may be gathered into the fold of a union of labor who, either from a perverted mind or for wrongs which he has suffered elsewhere or here, may do a thing which no man can defend, and which no union man will defend. But you must bear in mind that the organized working-

men of America have not always the choice of material. They have not always the choice of material.

The employers of labor, and particularly those who are usually hostile to the efforts of the workmen to improve their condition, send their agents to any part of Europe, and scour the cities and the towns and the slums of these places, and bring over these people and bring them into the factories and mills and shops and roads and quarries and mines, and then employ them. We try to keep our unions of labor as nearly, as fully, within the bounds of reason and of law and of decency as it is possible, and we are doing effective work on those lines.

But we say to you, gentlemen, that if these men are good enough to be brought over into this country to live, if they are good enough to help the employer as against the effort of the American workmen to improve their condition, if they are good enough to be employed for the profit of the unscrupulous employer, they are good enough for us to try to organize them and make better men of them. No man can truthfully charge that a man because he becomes a member of a labor organization thereby becomes a lawless citizen, that he thereby becomes a lawless man.

I could show you, Mr. Chairman and gentlemen, and demonstrate it beyond question, that the unions of our country, including the unions represented by my good friend, Brother Fuller, publish either weekly or monthly official journals—magazines—many of which will compare favorably with and far surpass in excellence of real genuine human interest and knowledge many of the pretentious and popular magazines. They contain information of the highest character, of the most intense interest to men as both workmen and mechanics to improve their mechanical ability, to devote their time and thought to the study and solution of problems affecting their work and their employment, and pages upon pages of diagrams and problems and questions and answers in the common school teachings, of reading, writing, and arithmetic, of the higher studies, of history, of economics, sociology, trade, power, science, learning, literature, poetry, art—everything. And when men undertake to address this committee and say that the organizations of labor do not do these things, they say that either which they do not know, or, knowing, say that which is positively untrue.

Incidental to this movement of labor there is occasionally a conflict. No one will excuse it; no one will attempt to palliate it; but this movement of the working people of our time is the struggle of the discontented masses of labor with the conditions as they exist, and it is their protest against it, and they will find the lawful means to bring about the improvement in their condition to-day upon the economic field, upon the political field.

We ask you gentlemen to give us an effective anti-injunction bill before this Congress adjourns. The workmen of the United States are impatient with this long and vain pleading, asking and petitioning for substantial relief from the grievances which exist, and which they know and feel, and they are determined to have it. We have been disappointed often. The Judiciary Committee of the House of Representatives has recommended the passage of the bill which I advocate—H. R. 4445. The House passed it once. The

Senate rejected it. It has been insinuated that it is all very good; pass it in one House, and defeat it, kill it, in the other; smother it.

But whether that be so or not, I repeat, the American workingmen have grown impatient, and they are not less sensible to their own rights and power than are the workingmen of other countries. On the strength of their American citizenship and their devotion to the institutions of our country they demand recognition; they demand from Congress the heeding of their too long vain requests. If we shall be disappointed in this Congress, well, there will be other Congresses, and perhaps then we may have others who are more fairly inclined to the earnest requests of the workingmen of our country.

Mr. LITTLEFIELD. That closes all that the proponents of the bill have at this hearing, I believe.

Mr. FULLER. We would like to request of the committee the opportunity, if anything is said by the other side that we would like to make answer to, of replying to it. At this time we are through.

Mr. LITTLEFIELD. Before the hearings are closed we will take that into account. I have not any doubt that the committee will give you an opportunity to rebut.

Mr. PARSONS. I now introduce Mr. Mahoney, representing the National Association of Manufacturers.

STATEMENT OF T. J. MAHONEY, OF OMAHA.

Mr. Chairman and gentlemen of the committee, I shall try, as far as possible, to direct what I have to say to the precise problems that are before the committee. If the committee had plenty of time and my associates and myself had plenty of time, it might perhaps be interesting to travel off on some of the side issues and discuss matters that are purely questions of economic interest. But I realize that time is precious to all of us, and perhaps to none of us more so than the committee, and I realize that we are presenting to the committee the question of the propriety of the enactment of certain legislation. That comes up in a concrete form in the two bills that have been mentioned to-day, the one advocated in the first instance by Mr. Fuller, which seems to be repudiated by the American Federation of Labor, which has been, I suppose, authoritatively spoken for by its president, Mr. Gompers, representing all that large body of organized labor affiliated with the American Federation.

I hope to invite your attention to certain practical, rather than moral, theoretical, considerations. You are asked to pass certain legislation, which will have certain restrictive provisions upon the power of the Federal courts in the exercise of their chancery jurisdiction. The first inquiry is, naturally, What is the occasion that gives rise to the demand for this legislation? Now, an occasion of that character might be found in either of two ways: First, that the law of the land as it exists to-day is oppressive, or, second, that the administration of the chancery jurisdiction by the courts has been oppressive, not by virtue of lawful sanction, but by virtue of an abuse of power. Can an affirmative answer be given to either of these inquiries? First, is the law of the land as it now exists oppressive; is it unjust? Second, has there been such an abuse of power by the courts as to make a restriction of their power appear reasonably necessary in the interests of justice?

Of the law as it is at the present time we are advised only in small part by the statutes enacted by Congress. It has been suggested that you can not find any statutory authority for the issuance of the injunctions against which these complaints are made. That may be true, outside of what is found in the Sherman antitrust act. But is it not also true that the great body of the law, both common law and equity law, is to be found outside the lids of the Revised Statutes? You can not find in the statute books of the United States, with the exception of those that relate to certain safety appliances used on railroads carrying interstate commerce, any statutory authority for the proposition that a master ordinarily is under the lawful obligation to exercise due care and to furnish his servants ordinarily safe appliances with which to work and a fit place in which to work. So that it is no argument against the exercise of this chancery power and authority that it is not bottomed on statute or statutory provision.

The inquiry as to what the law is, in the main, must be answered by a resort to the decisions of the courts. We there find what the courts have said are enjoinable acts and enjoinable combinations, and what they have said are not. It would be impracticable to stand here by the hour and read these authorities to a committee of eminent lawyers. I only refer to them just as I would in the use of authorities before a court made up of a bench of eminent jurists—to remind the tribunal what the law is, and to aid myself in the orderly presentation of my argument.

You will probably find in the disposition of the cases of *Arthur v. Hayes*, and the *Debs* case, and the case of the *Duluth, Ann Arbor and North Michigan Railroad Company v. The Pennsylvania Railroad Company et al.*, in those three cases you will find a complete statement of the line of demarcation between those things that the Federal courts hold may and ought to be enjoined and those things which those courts hold are not subject to the writs of injunction.

MR. LITTLEFIELD. Who drew the opinion in the *Arthur* case?

MR. MAHONEY. In the case of *Arthur v. Oates* the opinion of the circuit court, the reviewing court, was by Mr. Justice Harlan of the Supreme Court, who was at that time assigned to that circuit.

MR. LITTLEFIELD. That is, he drew that opinion as sitting in the circuit court?

MR. MAHONEY. Yes, sir.

MR. LITTLEFIELD. And not as sitting in the Supreme Court of the United States?

MR. MAHONEY. It was not an opinion of the Supreme Court of the United States. It was a review of the order of his honor Judge Jenkins, in granting the temporary injunction, sitting upon the circuit bench of Wisconsin. Now, in that case take the order that was made in the *nisi prius* court and the order that was made in pursuance of the decision of Mr. Justice Harlan and you have the line of demarcation pretty well defined there.

The property in question in that particular instance was in the hands of receivers appointed by the United States circuit court, and there can be no reasonable doubt that that circumstance was an important, if not the controlling, factor which impelled the circuit judge to make the writ as sweeping as he made it, the theory being that as the court had taken possession of the property it had a right to exercise a certain species of control which it would not have exer-

cised in the ordinary case of a private person coming to it for that relief.

Mr. LITTLEFIELD. That is, it was protecting one of its own instrumentalities?

Mr. MAHONEY. Yes, your honor; that is the theory. And on that theory the circuit court forbade the defendants not only from doing acts of violence to employees who remained in the service, but from destroying property and rendering cars and engines unfit for service, and further commanding those who wished to remain in the employment to leave the employment at a certain time for the purpose of crippling the operation of the road in the hands of the receivers, but went further, and forbade them to withdraw from the service in a body with or without notice, pursuant to a certain programme to go into effect on the 1st of January, 1894.

Mr. FURUSETH. May I ask a question?

Mr. LITTLEFIELD. If Mr. Mahoney has no objection.

Mr. MAHONEY. I will be glad to answer it.

Mr. FURUSETH. Will you kindly state where, in your opinion, the judges get the power for granting those petitions—upon what it is based?

Mr. MAHONEY. It is based upon what we speak of ordinarily as the chancery jurisdiction of the courts, which we have accepted as the chancery jurisdiction that the courts of England had exercised at the time of and prior to the Revolution.

Mr. FURUSETH. As a matter of fact, were there any such powers in the chancery courts of England at Lord Eldon's time?

Mr. MAHONEY. I am unable to answer as to the use or particular application of the powers by the English chancery courts as to the conditions or circumstances or occasions which gave rise to them, but I do know that at the present time the English chancery courts, inheriting the powers that were supposed to exist at the time of Lord Eldon and prior issue writs of injunction to-day more sweeping in this class of cases than are issued in this country.

Mr. FURUSETH. And is there not a fundamental distinction between the powers granted to our Government from our people—

Mr. MAHONEY. Oh, in many respects.

Mr. FURUSETH (continuing). And the powers granted to the English judges as coming from the Crown?

Mr. MAHONEY. In many respects there are essential differences between our form of government and theirs. But I hoped to keep as close as possible to what I understand to be a free inquiry, whether the law as it at present exists is oppressive?

Going back to the Arthur case, the Wisconsin case, upon review of that matter before a court composed of Mr. Justice Harlan, and I think Circuit Judge Woods and Judge Bunn, the district judge, the order was reviewed at great length, and so much of the order of the circuit court as forbade the defendants and their agents from withdrawing from the service by concert of action at a certain time was eliminated from the order of the circuit court. To that extent the order was modified upon the appellate proceeding.

But, notwithstanding that modification, the opinion of Mr. Justice Harlan still goes as close to the line in the way of prohibitions as probably any opinion of any circuit court, for in the course of that opinion he points out that there is a very manifest distinction be-

tween one man or a body of men withdrawing from the service of their employer by concert or combination between them, with or without notice, for the purpose of effectuating any lawful programme or any programme that they think may work to their material benefit, that there is a radical distinction between that and the making of an order by those who were not in the employment, those who do not sustain any relation to the particular work, making an order commanding those who are in employment and personally willing to stay there, to leave the service, not to accomplish a good to the employee, but to accomplish the ulterior purpose of those giving the order, of crippling the road or the property; that sort of an action when done in pursuance of a concert or agreement was pronounced unlawful, according to the opinion of Mr. Justice Harlan, and that part of the order stood. And you have there, I think, an illustration of the carrying of the power of control through these writs of injunction to just as far an extreme as it has been carried by any of the courts.

Suppose we take another case, which brings you close to the line of demarcation of what is enjoined and what is not. In this case—I can not remember just now how the original strike started, but it led up to the case of the Duluth, Ann Arbor and North Michigan Railroad Company *v.* The Pennsylvania Railroad Company et al.—the railroad company had a strike upon its hands. It was engaged in interstate commerce. It became advised that the Pennsylvania Railroad Company would refuse, at the dictation of certain organizations, to handle its freight, and it went into court and obtained an injunction running against the Pennsylvania Railroad Company and its agents and servants, enjoining them from effectuating what we might describe by the one word “boycott” against the complaining road.

These men were not enjoined from quitting the service of the Pennsylvania Railroad whenever and however they might see fit, with the hope thereby of bettering themselves or their fellow workmen. But what they were enjoined from doing, jointly with their employer, was to carry out a combination, compact, agreement, conspiracy, if you will, not in their own interests, not to effectuate one side of the controversy to which they were a party, but to cripple another road with which they had no contract relations or relations of any kind whatever.

These are the cases, Mr. Chairman, that I think give us the extreme application of the use of the injunction by the Federal courts, and the question arises, Are those decisions morally right? If they are, they ought not to be interfered with. We have what will some day be a leading authority, if it is not so already, upon questions of this kind, both from a legal and ethical standpoint, and it will not be without value from an economic standpoint.

In the report of that great Commission appointed by the President to investigate the anthracite coal strike, in the course of the opinion of that Commission the right of withdrawal from work for any reason that suits the workmen, upon individual initiative or as the result of contract, for a reason that may seem good to you or me, or may seem bad to you or me, is a right that can not be questioned; but when the combination directs its energies, not to the effectuation of what they call the primary boycott, to wit, nonintercourse with their

former employers, but to break down some third party, with a view to compelling that third party, human or corporate, from withdrawing his, her, or its relations, then the combination becomes a conspiracy, and should be so denominated.

This is an opinion not of any court of the land in any strict sense. The gentleman who rendered that decision and gave us that report put it not upon the technicalities by law, did not base it upon precedent. It was a commission that undertook to dispose of the questions in hand from an ethical rather than any other possible standpoint.

Mr. FURUSETH. Is not that petition there, or that report that you speak of, urging upon another party to stop trading with a third party, a lawful transaction as long as it does not involve a threat, or involve something which is illegal in itself? Is it not lawful, both in morals and in religion and in law?

Mr. MAHONEY. I will not undertake to go into a theological discussion, Mr. Chairman, but I shall try to give a pertinent and direct answer to the balance of the question. From a legal standpoint I have a right to go to my butcher and say to him, "If you value Mr. Furuseth's trade more than mine, you can have his, but you can not have mine." He has the right to do the same thing. Now, whether that is a moral thing to do I have some question, particularly where the object I am seeking to gain is not a legitimate advantage to myself, but a detriment to him. But the courts have not gone to the extent of saying that I may not do that.

Neither do I read the decision of the Anthracite Coal Strike Commissioners as saying that I can not do that, but what they do say is that if I can gather a lot of other men around me who can go not only to one butcher in our town, but to all of the butchers in our town and by threat of injury to them of any kind, induce all of them to quit trading with you, then it is an unlawful conspiracy. That I understand, is the doctrine; and certainly, Mr. Chairman, that is the ethical doctrine.

Mr. FURUSETH. You mean, of course, if this is done with an illegal or a wrong object in view?

Mr. MAHONEY. I will answer that. We have primary and secondary and tertiary objects in view, sometimes; and I have run out of adjectives, or I could carry it still further.

Mr. LITTLEFIELD. Sort of sausage links? [Laughter.]

Mr. MAHONEY. Yes, your honor. Now, I can not conceive, Mr. Chairman, of any sort of a primary object in a case of that kind that would be justifiable. By some peculiar process of reasoning one may put into words an argument, no matter how it may offend against his conscience, justifying some remote object that will be said to be meritorious. Indeed, I suppose I would be pardoned to say this, because I come from that nationality myself. You have heard of the Irishman who ducked the Jew under the water, and when he came up asked him if he would be a Christian, and the Jew said he would not, and then he ducked him again, and when he came up he asked him if he would be a Christian again, and he still said that he would not, and he kept it up until finally he said that he would, and then he ducked him again and drowned him, for the good of his soul. [Laughter.]

Mr. LITTLEFIELD. He would not take the chances of a recantation?

Mr. MAHONEY. Probably the idea of good in the mind of the Irishman was too remote. The immediate result was a personal injury. And I think if you would appeal to the court of morals you would get the same answer. But it is a little more difficult to lay our fingers on the authorities. The courts—and I think the court of morals—will say that if the immediate purpose of the boycott is an injury to the boycotted persons and not a legitimate benefit to those engaged in the combination, it is morally wrong, as well as legally wrong.

Mr. LITTLEFIELD. That is to show the intent characterizing the act?

Mr. MAHONEY. Yes, sir.

Mr. LITTLEFIELD. That is your proposition?

Mr. MAHONEY. Yes, sir; and that the courts will not try to follow out to some remote benefit. Let me give you another illustration: It is not the case in the Federal court. I know of no decision unless you can say that the final decision in the Arthur case, made by Mr. Justice Harlan, is such a decision—I know of no case going quite so far as the comparatively recent case of *Erdman v. Mitchell*, in the supreme court of Pennsylvania, which is attracting some attention from Pomeroy, and from Judson in his recent work on combinations, treating it as a leading case.

In the city of Philadelphia there was a certain union of plumbers. They seemed to be what the larger union body there would call a scab union. They were an incorporated union of plumbers. The larger body of plumbers was an unincorporated union, affiliated with the union trades council. Some of these members of the incorporated union were hired by a subcontractor to put in plumbing on a large building. A strike was called against the contractor, and all lines went out to force the discharge of these two men from their places. It was not a strike to benefit a single man who struck.

It was not a strike to benefit anybody who had any relations to the construction of that building, but it was a strike for the purpose of driving those two men out of their employment. They went out; the strike was settled; the building went on to completion. And then these men sought employment elsewhere, and every job they went onto was boycotted against them, and the contractors, one after another, were compelled to discharge them from their employment. These men who had thus been what I would call persecuted appealed to the courts of the State of Pennsylvania and obtained a writ of injunction, which was affirmed by the supreme court.

I can not give you the volume and page of that decision, but it was a decision in 1902 in the case of *Erdman v. Mitchell*, and that court held that a combination to effectuate a boycott on any job or building in which these men might be employed, because of the fact that they were not affiliated with the larger union, was an unlawful conspiracy and restrainable. Why? They say that remotely—the men who conducted these boycotts argued—that by the building up of their labor unions by that sort of process they accomplished something for the benefit of their own membership. But the courts say that that is too remote when compared with the direct result of putting these workmen out of the opportunity of earning a living unless they will submit to your demand to join an organization that they themselves personally prefer to keep out of.

There is perhaps an extreme case of the use of the injunction, and yet it seems to me from every standpoint of law and morals it is not only justifiable, but that the contrary would have been unjustifiable. I draw the attention of the committee to these cases because these are the cases that seem to me to be close to the line of demarcation between what is enjoinable and what is not enjoinable, and that is why they are proper facts to consider in considering whether the powers of the courts ought to be restricted.

Turning, then, to some of the other cases to which attention was called. Two years ago Mr. Gompers called the attention of the committee to the same case to which he called your attention to-day. He concedes now, of course, that he made an error in its interpretation. But he calls the attention of the committee to another case, from West Virginia, two years ago, where the men against whom the writs of injunction ran were prohibited from marching and encamping on the public highway, and seemed to think that it was a great outrage that that use of the public highways should not be allowed to anybody.

It all depends, Mr. Chairman, upon the manner and purpose of the use. My right to walk down one of these sidewalks is not so great that I have the right to exclude you from the walk. The right of these men to use the public highways was not so great that they had a right to use them in such a way that workmen who desired to go to their places of employment were compelled to pass through or by men so arrayed as to constitute an actual menace of danger against their personal safety; and that is the purpose of that kind of a writ.

Just one other observation on what the law is at the present time. Perhaps I should pass from that. The time is limited. I think these cases show us what the law is at this time. You can illustrate it by hundreds of cases, but it is a waste of time to do so.

Mr. FURUSETH. Will you let me ask you just one question before you leave that?

Mr. MAHONEY. Yes, sir.

Mr. FURUSETH. You contend, then, that the intent determines the legality?

Mr. MAHONEY. Not wholly. There are some acts that you can not possibly justify by any sort of an intent.

Mr. FURUSETH. No; but if the action itself is legal, how is it proper to inquire into the state of mind of the party who does it? Is it not on the assumption that he does it under a legal purpose, so long as it is a legal act?

Mr. MAHONEY. So long as he does it as an individual, they would never undertake to issue an injunction against him in a matter of boycott or anything of the kind. But whenever he joins with himself such a number of persons as to make their very numbers a power for mischief, then their purpose is ascertainable, because they can not enter into an organization of that kind without making known their purpose.

Take another illustration. It is complained that in some writs of injunction the word "persuasion" is used. The question was asked of Mr. Gompers here if he knew of any cases in which the writs ran solely against the persuasion. He said that he would not insult the committee by pretending that it did; but the circumstances that the word "persuasion" follows along in a series of words, such as

"assault, violence, intimidation, threats," and "persuasion," leads to this conclusion. When we have a series of words of that character, we know how the courts interpret the last word.

They interpret that word "persuasion," and have had occasion to interpret it over and over again, as meaning persuasion of the same general kind and character as that which is exemplified in the previous things described, and that was the language of Mr. Justice Harlan in the case of *Arthur v. Oakes*, wherein, being called on, being asked, to eliminate a part of the injunction that referred to other interference, he said:

The general inhibition against combinations and conspiracies, with the object and intent of crippling the property and embarrassing the operation of a railroad, must be construed as referring only to acts of violence, intimidation, and wrong of the same general class as those specifically described in the previous clauses of the writ.

And I do not believe there is a rule of interpretation better settled than that when you have a list of words, that the word winding up such a list of terms shall be construed as of the same class as those that are specifically enumerated. So much as to the use of the word "persuasion."

Upon what the state of the law is at the present time I have taken those cases that are extreme cases in the enforcement of the chancery authority in the courts, in order that we might go close to the line, and I submit that, of course, to every man's judgment of right and wrong, but I can not see against what anybody can complain in these things.

Take the writs that are issued. A writ goes out which enjoins the defendants from assaulting the employees of the complainant. Do you complain of that? Do you say that writ ought not to issue, if the employees of a complainant are in danger of being assaulted, and the business of the complainant is in danger of being destroyed by such assaults? Is it wrong to issue an injunction against the burning of cars and the derailling of engines and the destruction of signal towers and the setting up of conflicting light signals in a switch yard in the nighttime? Is it wrong to issue an injunction against those things?

Mr. LITTLEFIELD. Their criticism is that it is wrong to issue an injunction against the doing of any criminal act.

Mr. MAHONEY. I might as well touch upon that now. I have tried to understand Mr. Gompers's argument, and I do not want to misinterpret him; but the way I understand his argument is this: That an injunction never ought to issue which would restrain or prevent a combination to do any act where the act itself, if done by a single individual, would not be a crime. In fact, I interpret that to be the wording of this bill that is now before the House.

Mr. FURUSETH. That is correct.

Mr. MAHONEY. That an injunction should never issue to restrain a combination to bringing about a certain act, if that act, if done by a single individual, would not be a crime. And Mr. Gompers advocates that bill.

Then Mr. Gompers stands before this committee and says to you that the law ought to prohibit the issuance of an injunction against anything that is a crime, because there you have an adequate remedy in the law. So that, if I understand his position correctly—and I

understand that is Mr. Furuseth's position too—an injunction should never prohibit an act that is a crime and should never prohibit an act that is not a crime. In other words—and I believe these gentlemen are probably frank enough to avow their position—that the powers and authorities of the Federal courts to issue injunctions restraining any acts or combinations in furtherance of a strike or boycott ought to be entirely abolished.

Mr. FURUSETH. Do you believe that there ought to be injunction against crime?

Mr. MAHONEY. Yes; the Supreme Court believes that, too.

Mr. FURUSETH. Well, that is the question, whether it does or not. In the Debs case I think it says that it does not. But that is another matter. What have we got the law for, then? In other words, what is the difference in the essence of the thing between a law made by Congress—is not that an injunction with the specific punishment and special rules—and an injunction issued by a judge at his discretion?

Mr. MAHONEY. Of course it must be, in view of the decision in the Debs case, practically a waste of time to argue as to the right and justice of enjoining anything that is a crime. It is often said that you can not enjoin a libel. But, Mr. Chairman, when an act or combination of acts threatens which will produce irreparable injury, irrespective entirely of their character as crimes, or libels, neither the courts of chancery nor any moral code that I ever had any acquaintance with says that there is such a halo of sanctity about a crime or a libel that the very fact that it is a crime releases it from the possibility of being prevented by an injunctive process of a court.

Mr. FURUSETH. You say "involving property." What property, if you please?

Mr. MAHONEY. I do not know whether I used that expression or not. I do not think I did. But I did not limit it. I do not limit it. Combinations that affect my personal liberty and my rights otherwise than in the way of taking from me or affecting the value of any tangible property, property that I might return to the assessor, for instance, are enjoinable, and ought to be enjoinable. Upon what theory of morals—because the law is well settled—can it be contended that it is right to issue a writ of injunction out of a court to protect a man's horse or his dog and that it is wrong to issue such a writ to protect himself?

I am appealing now, if the committee please, to a body of men who have to do with the making of laws, not with the deciding of them, and therefore I say that the law being settled, the question is upon what theory of morals is it right to protect assessable property and not to protect life and limb?

Passing this discussion on the law as it is, I think it necessary as a foundation for taking up the proposed amendments. I will have to hurry through this very rapidly. Take the bill advocated by Mr. Gompers, for instance. If I wanted to present an exhaustive argument, an analytical argument, that would handle that whole question, I could not do better than stand before this committee and read the minority report of the Judiciary Committee of four years ago.

Mr. LITTLEFIELD. I did not get your last expression.

Mr. MAHONEY. I say that if I desired to present an analytical argument, a complete argument, a logical argument, against this bill advocated by Mr. Gompers, I could not do better than stand before the

committee and read to it the minority report of the committee of four days ago.

Mr. PALMER. Do you know who wrote that?

Mr. MAHONEY. Yes, sir; I know who wrote it. I heard the suggestion, too, that the chairman desired to have the matter repeated, in order to have it impressed, which, I suppose, was a little bit of viv.

Mr. LITTLEFIELD. I did not quite catch onto what the point was.

Mr. MAHONEY. I suppose that results from an envious disposition against the chairman. But I can add a little in the way of illustration. I do not believe that the advocates of this bill really understand the effect and scope of the bill. I know that it was stated that when the Sherman antitrust act was passed it was thought to be by the Congress—by many who voted for it, at any rate—an act that would not run against any combinations of workmen. It has been given, however, an application which makes it run against them; that is, the Debs case was so interpreted by the circuit court, but the Supreme Court stated that it did not care to rest upon so narrow a foundation. But suppose this act becomes a law.

Any agreement or combination entered into in pursuance of or in furtherance of a trade dispute between employers and employees shall not be criminal or enjoined unless the acts contemplated would be criminal if done by a single individual. It is not true that the Federal courts have exercised their power only against workmen and workmen's organizations. In 1894, during the railroad strike in Chicago, after Judge Grosscup had charged the grand jury, reports were circulated and charges made that the railroad managers were refusing to employ men when they might employ them, and had entered into a combination to permit the roads to become crippled in order thereby to arouse public sympathy for themselves and indignation against those who had charge of the strike; and Judge Grosscup called in the grand jury and gave them a supplemental charge, which he said to them that if any two or more men had entered into an agreement to permit these railroads to be tied up, to refuse to hire men where they could hire men to take the places of the men who had quit, these men were guilty of a conspiracy, and it would be the duty of the grand jury to return indictments against them.

It is a lawful thing for one railroad manager to refuse to hire men and let his road become tied up, but pass this act and you will see at a combination of railroad managers may, whenever they can show that they have entered into a combination pursuant to or in furtherance of a labor dispute, enter into an agreement between themselves by which they deliberately permit the entire commerce of the country to be tied up.

Take another illustration. The Government of the United States seeking to prosecute the large packing-house owners of the country on the charge that they have violated the Sherman antitrust act in the placing of a certain conspiracy among themselves, and also upon the charge that they violated an injunction issued by the court for the purpose of enforcing that act. It is a perfectly lawful thing for a packing house—one packer—to say, "I will not sell my beef under a certain price."

It is a lawful thing for him to do that, and nobody has a right to complain. It is not a crime. But when all of the packers enter into

a combination between themselves and fix a price at which they will sell meat they have done what the law condemns. But, Mr. Chairman, pass this law, and if they can show that they made the combination to make the prices of meat prohibitive, entered into that combination as a weapon of offense or defense in a labor dispute that existed between them and their employees, you have legalized their acts and tied the hands of the courts against issuing any injunction against them and forbidden a criminal prosecution. I do not believe that the gentlemen who advocate this measure realize its full import.

Passing, then, Mr. Chairman, to the other bill, which does not seem to have any recognition from the larger body of the union labor, it would be a very presumptuous thing for me to undertake, upon any matter of this kind, to ask you gentlemen to receive an expression of opinion from me antagonistic to an expression of opinion from the Chief Executive. I may have my amount of egotism, but I have not got quite to that limit yet. However, I think it altogether possible that recommendations coming from the Executive in the way of his messages to Congress, and outlining general policies and theories and measures, calling the attention of Congress, perhaps, to abuses and leaving it to Congress to find the way, where abuses exist, to correct them, would be of a little different character from one that undertakes to prescribe the particular kind, or even the words, of a bill that ought to be enacted.

I think, however, that if inadvertently the form of the bill seemed to be prescribed by the President's message it would be the result of the impossibility of giving that fitting care to the framing of the bill that it should deserve, and I think surely that the President himself would say that it was never intended that the language of his message should be put into the form of a bill to pass Congress; that all that he intended was to call attention to the general subject, and if Congress should believe that there were abuses, to remedy and correct them. Now, I just want to suggest to the committee that in my judgment that bill would be exceedingly mischievous.

Mr. LITTLEFIELD. You are speaking of the bill H. R. 9328?

Mr. MAHONEY. I was speaking of the Gilbert bill. I am speaking of that bill. Mr. Gilbert evidently does not think it would be proper to pass a measure of that kind that would be limited to a certain class of injunctions, but rather that it ought to say, "No injunction in any case." The difficulty with the suggestion of Mr. Gilbert seems to me to be that a preliminary restraining order or a preliminary injunction does not adjudicate a man's rights at all. Neither does it change his status. You can not issue an execution on it. You do not take his property. You simply put out an order to keep matters in statu quo until there can be a hearing.

Some thirty-odd years ago the old system was abandoned. Is it not much better to retain in the hands of the court power, where the exigencies of the case may require it, to preserve the status quo for the time being and then inquire into whether the change ought to be permitted afterwards? The injunction simply does that. Besides, Mr. Chairman, people do not ordinarily apply for injunctions in any relation in life until they feel sure that they need them, until they feel sure that a condition has arisen which demands them, and particularly is that true in the case of strike disturbances. I can give you

an instance of my own personal knowledge. The packing-house strike of 1904 originated on the 12th of July. That was at Omaha. A restraining order was not applied for until the 20th of July, some eight days after the strike commenced.

In the meantime cars going into the packing-house establishments had been derailed, workmen had been seized and made prisoners and conducted to the labor headquarters and sent out of town, passenger cars had been assaulted and cut off of the trains and run onto sidings and all the passengers taken out in a body. These things had been done. It was necessary to make some 1,700 and odd persons parties defendant in the proceeding. A temporary restraining order was granted on the 7th of July, and I have a certificate under the seal of the clerk detailing these facts, and I would be glad to leave it with the reporter. There were the names of 1,759 defendants under the writ issued on the 20th of July. The United States marshal, with three deputies, making four men in all, worked for eight consecutive days in making service and succeeded in serving only 624, or practically one-third of the number actually named in the bill.

Upon subsequent hearings a number of these services were impeached, because men would deliberately come up and accept a copy of a writ under a false name, and the return would be that he served upon a man whose name was given him, and that man was able to show that he was not served at all. But the law is that the writ is enforceable against those who are named and served, and those, too, to whom it can be proved that the knowledge of the contents of the writ came. That was decided. After a number of men were prosecuted for contempt, the United States Government took hold of the matter and the United States grand jury returned a number of indictments, based, I think, on section 1725, on the theory of obstructing the due administration of justice, and these men were put on trial before petty juries.

The cry had been loud and long that the punishment for the violation of an injunction deprives a man of a trial by jury. In that instance 16 different cases went to trial by a jury under indictments from the grand jury for obstructing the administration of justice and deliberate violation of this writ. In the majority of these instances in which they went to trial there had not been personal service by the marshal or his deputy, but the knowledge of the writ and its contents was brought home to the satisfaction of the jurors in 15 cases out of the 16 beyond a reasonable doubt, as shown by their verdicts. Notice was given in every possible way. Now, Mr. Chairman, enact that measure—

Mr. PALMER. What did the jury do to them?

Mr. MAHONEY. Convicted 15 out of the 16, finding two things beyond a reasonable doubt—first, that they did violate the writ, and, second, that they had notice of its terms and provisions. The evidence was overwhelming upon both propositions.

Mr. Chairman, if you pass this measure and say that not even a restraining order can be had without previous notice—whether you say due, reasonable, or whatever you say; whether you say ten days, ten hours, or ten minutes—the difficulty is, Mr. Chairman, that you can not make the service. You can not do it in a great majority of cases; and in the particular instance which I cited to the committee the great bulk of the disturbance was committed, the great majority

of the assaults were committed, by men who were not served with a notice.

And it was shown that at a convention of the men engaged in the strike in one of the large halls of the city of South Omaha a lawyer employed by the Amalgamated Meat Cutters' Association stood up and advised the men that nobody was bound by that writ except the men on whom service was had. Now, you pass a law of this kind and say that a writ can not be issued, not even a restraining order, no matter how great the exigency, unless there is a service of notice previous to the issuance of the writ—I care not whether it is long or short, Mr. Chairman—you simply make it impossible in a case of large strike disturbances to preserve property, to preserve order, to preserve human life. You make it out of the question.

Mr. BIRDSALL. What do you understand is comprehended in the term “due notice,” “due or reasonable notice?”

Mr. MAHONEY. The court might interpret that as to due and reasonable notice as going to the length of time of the notice. But I would not think that if you would publish a proclamation to-day in a newspaper that you were going to apply for a writ to-morrow, that a court would tolerate that under this bill. I do not think a court would do so.

Mr. BIRDSALL. I do not know, I am frank to confess, just what it does mean. I wanted to get your view of it.

Mr. MAHONEY. Another serious difficulty. Under the law as it is to-day if you can prove the fact that a man had knowledge of the writ after it was issued, and the writ is returned, the mere fact that the writ is out the court does not say binds him unless he knows enough about it—unless there is enough to show that he contumaciously violated it—it is not effective. But if you pass this bill and say that due or reasonable notice is necessary, then does it not follow of necessity that whatever writ you do get is only effective as to the particular persons to whom you did give that notice?

Name 2,000 defendants and describe others in your bill, if you must, and where the exigencies require it, and get service on 1 or 20, or any kind of a notice before you get your writ, and is it not the necessary implication when you say that a restraining order shall not be granted at all except upon notice to the adverse party, that nobody will be considered an adverse party to be bound by it except the 1 or 2 or 20 upon whom you get service?

Mr. BIRDSALL. It has been suggested as to this bill, under the term “due notice,” whether it would not be within the discretion and absolute power of the court to whom the application is made not only to prescribe the form of the notice, but the time it is to be given, and the form of its publication, and the manner of service.

Mr. MAHONEY. Well, if the committee would put an amendment into that bill which would leave it within the power of the court to order that service be made by publication, notwithstanding that there is no showing that the defendant is without the reach of the process, with that “if,” and then with the other “if” that the courts would afterwards hold that a publication of the notice against a man for a writ that runs in personam can bind him and make him amenable to the further process and government of the court, it might take out all the destructive features of this bill.

Mr. BIRDSALL. The legislature has power to prescribe what notice shall confer jurisdiction upon the courts. That, I suppose, would be conceded. Now the question is whether this bill does not confer all that power upon the court or the judge. I wanted your views on it.

Mr. MAHONEY. Whatever notice would have to be given under this bill would be a condition precedent to the granting of any writ. That would be very plain.

Mr. BIRDSALL. Yes.

Mr. MAHONEY. When the legislative department has seen fit to say that a court shall not issue a writ at all without notice as a condition precedent to the defendant, or the adverse party—I do not recall the exact wording of the bill, but it would be the same thing—then I would expect the court to hold that the legislature meant an actual personal service of the notice.

Mr. PALMER. It provides, further, that there must be an opportunity for a hearing. It, of course, means a personal notice.

Mr. MAHONEY. Yes, sir. So that I think that bill makes it impossible to get a restraining order in any sort of time to be effective to preserve life and property. I would not take a moment of the time of this committee on the constitutional question here. Raised as a strict constructionist, I do think that at one time I had some ideas on the proposition of the Constitution following the flag, but I bow in humble submission to the authority that ultimately determines all these questions, and although the decisions of that court were declared to be decisions divided as close in the middle as they could get, yet those decisions are the law of the land. I think this committee should look at it from the standpoint that if this law is enacted it will be enforceable, and then if it is a good law to enact it, and if it is not a good law not to enact it, if it is a mischievous law.

Mr. FULLER. With the permission of the committee, I would like to ask Mr. Mahoney one or two questions.

Mr. MAHONEY. Certainly.

Mr. LITTLEFIELD. Go ahead.

Mr. FULLER. I understood you to defend it on the grounds of protecting personal rights as well as property rights?

Mr. MAHONEY. Yes.

Mr. FULLER. Did I understand you right?

Mr. MAHONEY. Yes.

Mr. FULLER. Meaning protecting a man from personal violence?

Mr. MAHONEY. Not only personal violence, but a thousand classes of assaults upon his personal liberty.

Mr. FULLER. Then why not enjoin a man from killing another?

Mr. MAHONEY. We do that, sometimes; and it is necessary sometimes, too.

Mr. FULLER. Does a court punish a man for murder or for violating an injunction if he kills a man?

Mr. MAHONEY. I have no doubt that the court could punish him for contempt, if he was convicted. [Laughter.]

Mr. FULLER. I am not suggesting this in a controversial way. I wanted to get your opinion. Do you think that the courts of the United States to-day have the power to protect personal rights by injunction?

Mr. MAHONEY. Have any power to protect personal rights?

Mr. FULLER. Have power to protect personal rights by injunction?

Mr. MAHONEY. You put the question in the abstract, and I answer it, yes. I do not know what concrete application you have in mind.

Mr. FULLER. As a general proposition, do you think that the power came to them from the courts of England—what they exercised at the time of the adoption of the Constitution?

Mr. MAHONEY. As to the courts and the procedure of the courts, a great part of our procedure, Congress has conferred upon the courts of the United States general equity jurisdiction.

Mr. FULLER. Take it under the equity jurisdiction, without any legislation.

Mr. MAHONEY. They do, in the same sense precisely that our common-law rules are handed down to us from the common law of England. Of course conditions in the different countries change and modify the rules.

Mr. FULLER. As you understand—I do not want to suggest it in any controversial spirit—my understanding of these equity powers of the Supreme Court of the United States is that they are simply those which existed at the time the Constitution of the United States was adopted.

Mr. MAHONEY. I think I understand what you are getting at.

Mr. FULLER. What I want to know is whether you think that that power existed in the English courts of chancery at the time the Constitution was adopted—the power to protect personal rights by injunction—that is, where there is no property involved—purely personal rights?

Mr. MAHONEY. The power, Mr. Chairman, and the incidents and occasions for its exercise are so vastly different things that, though the power may have resided in the great court of chancery from which our chancery courts are said in a way to inherit their powers, though the powers may have resided there, the particular occasion warranting their exercise may not have arisen. If there is anything in the way of our jurisprudence that is flexible to the extent of adapting itself to the occasion, it is the chancery practice and the chancery procedure and the chancery writs, or equitable writs.

But the instances, the particular kinds of ways in which the instances arise, are so innumerable and so unforeseeable that it is not conceivable that the chancery courts of England ever undertook to put limitations upon them or give a limited definition. So that what Mr. Fuller has in mind evidently is that our courts have made an application and use of the power to situations other than those to which the power had been known to be applied formerly.

Mr. FULLER. No; the general power. Now, is there any legislation given to the circuit court or the district courts by Congress that would authorize them to protect personal rights by injunction?

Mr. MAHONEY. Only the general grant of the equity powers.

Mr. FULLER. Now, I want to ask you another question. Do you think that this Gilbert bill would stop what is generally denominated a blanket injunction? You understand what I mean by that?

Mr. MAHONEY. I think its effect would be—

Mr. FULLER. To prevent them?

Mr. MAHONEY. To prevent them, except to run against persons previously served, and that, of course, would destroy the right to punish those who butt in.

ARGUMENT OF MR. JAMES A. EMERY, OF NEW YORK.

Mr. EMERY. Mr. Chairman and gentlemen of the committee, I appear as the representative officer of the Industrial Citizens' Association of America, an association composed of between 300 and 400 local associations in various parts of the country, some of which are employers' associations, but the greater part of which are associations composed of both employers and employees, not merely citizens' alliances, but citizens' industrial associations and citizens' associations. I appear also by request to present a protest to the Gilbert bill and Little bill upon behalf of the Building Trades Employers' Association of New York, an association composed of about 1,000 firms engaged in the building industries of that city, and on behalf, by request, of the Typothetæ of the city of New York, who requested me also to file a formal protest in their name. (NOTE.—The protest referred to will be found at the end of Mr. Emery's remarks.)

I appear, then, Mr. Chairman, in special protest against the enactment of the Gilbert and Little anti-injunction bills. There is a very considerable difference between them, it is true, but we believe that in the general tendency and the general effects sought to be attained by the proponents of these measures that there is a very great similarity; that one is the opening wide of the door, if you please, and the other its slow opening, that one may at least secure entrance through it.

Our opinion on the two bills and position is practically that which is illustrated by a little anecdote I heard from one of the Senators to the effect that he had turned down a certain applicant for office, and in answer to the reason why he had turned down the one and appointed the other he said that his position was perhaps somewhat like that of an old negro servant who had asked him to assist in securing a marriage license, and that he had done so, and that it was in the name of Martha White. And when the servant had paid the dollar and the license had been secured he came to him suddenly that evening, asking him if it was possible to change the name of the lady from Martha White to Mary Green. He told him it would be possible, but it would cost him 50 cents more.

The change was about to be made when the negro came back to him and said, "Well, pardon me, but I think I would like the first name kept on there, because, on thinking it over, I can't see 50 cents' worth of difference between the two girls." Practically speaking, Mr. Chairman, in its actual effect upon the protection of property and personal rights, which we believe an equity court contemplates, we believe the ultimate effect of such legislation, with the moral weight which it would have upon the legislatures of the States, considered merely as a matter of expediency, if you please, would be a course of very serious danger by the withdrawal of effectual remedies, adequate protection, which these courts have given during all the time that Federal courts in the operation of Congressional legislation have had jurisdiction of these matters, and would also operate to affect the position of States dangerously.

In respect to the technical objection which may be made to this legislation I have nothing at present to say. That has been covered

so ably and so splendidly by Mr. Mahoney that I feel I would be intrusive and presumptuous indeed did I endeavor to improve upon the discussion he has given to you. But I would like to address myself to a few general principles that have been laid down here. As to why the American Federation of Labor, through its president, Mr. Gompers, and why the Brotherhood of Railway Trainmen should request this legislation from you we have some remarks to submit.

Mr. Gompers, in his remarks, appears to take the position—and it is a position not uncommon with labor leaders to-day throughout the United States—that there should be for labor organizations a particular set of laws which should not operate against their members, and which should be so drafted that it would be possible for them to violate other laws and not come under the application of this particular legislation.

Furthermore, Mr. Gompers seems to assume the position that because of the objects of organized labor, which in their ideals and as ostensibly declared no man here present, least of all myself I am sure, would refuse his approval, he believes that there is a peculiar sanctity that attaches to those objects, and because of the good of the objects themselves, because of their idealistic splendor, because of their abstract justice, because of that assistance which they expect to render by their accomplishments to the workingmen of America, that the means by which those objects are accomplished should not be the subject of question.

The gentleman has said practically, in effect, that the doctrine that the end justifies the means is true, at least to a certain extent, in labor disputes. It is very much like a position, and a delicate one, stated by Mathew Arnold, in which he made a most remarkable defense of murder, where the murder was intended for the purpose of accomplishing public good by the removal of a public despot. Said the character, into whose mouth Mathew Arnold put the words:

We call it murder when a wretch for private gain or hatred takes a life;

But when in some great public cause a hand is without love or hatred austere raised against a power dangerous to all.

Exempt from common checks to be but thus annulled, ranks any man with murder such an act?

Grievous deeds, perhaps, but murder, no.

Prove then the cause, the charge of murder falls.

Prove then the charge, all actions on account of attacks upon person or property must fall because of the direct purpose which a labor organization has in view in the accomplishment of its act.

With regard to the comments which Mr. Gompers and others have made upon the decisions of inferior and appellate courts, there is perhaps no occasion to make comment at this time. But there is an exceedingly dangerous position which is developed here, Mr. Chairman, by making the chief argument directed in favor of the proposed legislation the abuse of discretion upon the part of Federal judges.

It is, sir, stripped of the polite and courteous phraseology in which it has been stated, a direct attack upon the respect in which the judiciary should be held by the people of the country. Let us once begin to accept without rebuke the repeated declarations that courts of any department of the Government are influenced by improper motives in the use of the vast powers conferred upon them and we have at once endangered the influence which the court holds with the people and we have caused to come into existence a disre-

spect and practically a contempt for the courts, and a contempt to which some of the gentlemen here who have presented arguments in favor of this proposition do not seem to object.

If legislation which has as its purpose the checking of the power of the Federal judiciary as based upon the attack made upon its abuse of discretion and upon an apparent insinuation and innuendo that there is an improper prejudice on the part of the courts toward those who may be litigants under existing legislation, if that is permitted to pass unrebuked, gentlemen, and if Congress were to pass legislation for which that was the chief argument, it would give a moral slap in the face to the judiciary of the country itself.

And all the cases which Mr. Fuller was able to name here, which Mr. Gompers was able to suggest—Mr. Fuller, I think, named two in the course of ten years; Mr. Gompers named one or two and then withdrew his objection and based his chief objection upon a mutilated record, upon an argument which, if permitted to continue in form, would be nothing more or less than the atheist's defense of suicide on Scriptural grounds, when he took from one section of the New Testament, "Judas went and hanged himself," and then, from another gave the sanction of the Deity to the act of self-destruction.

Practically, gentlemen of the committee, the powers of the court in existence at the present time have been very frequently used because there has been very frequent occasion for their use. There has been an occasion to protect property by virtue of the right of injunction, and of personal rights involved because of the fact that a continuous attack has been made upon those personal rights; and this is not merely the view of the persons who, by virtue of their interests in the offered legislation, might be assumed to be prejudiced, but it is the view, Mr. Chairman, of members of the judiciary, of public men who have had occasion to make themselves familiar with the facts, and of tribunals of a moral character, which from time to time have had an opportunity to present their views upon the question.

This matter is not new matter. The powers which the courts are presently exercising are not so novel and so unusual in their character that the necessity for their use is not familiar to every man who reads the daily press.

Mr. Justice Brewer, in an address made ten years ago to the New York Bar Association, pointed out at that time the peculiar conditions, if you please, which usually come into being during one of those labor disputes which we term a "strike," and which perhaps is an excellent practical illustration of it. Mr. Justice Brewer said:

The common rule as to strikes is this: Not merely do the employees quit their employment and thus handicap the employer in the use of his property, and perhaps in the discharge of the duties which he owes to the public, but they also forcibly prevent others from taking their places. It is useless to say that they only advise; no man is misled. When a thousand laborers gathered around a railroad track say to those who seek employment that they had better not, and when the advice is supplemented every little while by a terrible assault on one who disregards it, everyone knows that something more than advice is intended.

Mr. Gompers made a statement here this morning that all he sought for was an opportunity upon the part of striking workmen to present their cases to the men who took their places. In what other department of life would we submit for one moment to the declaration upon the part of any individual that he had the right to hamper, to annoy,

to make himself a public nuisance in pressing his views upon any individual who differed with him?

If we have our religious or political and economical differences, would any gentleman say for an instant that it was permissible, that it was tolerable, and that the law ought to approve the attempt upon the part of the individual who differed with him to bring him to his view, to beset him in his house, to follow him along the streets, to go to his place of his employment, and in season and out of season to urge upon him the particular argument which he believed should make the other man of his form of thinking?

And yet in a labor dispute it is continually laid down as though that were a dispute by itself or was to be governed by different rules in morals and in law; that a man has a right to go to another who disagrees with him as to the advisability, the expediency, or the justice of the strike, and on the streets, in the cars, wherever he finds opportunity to approach him, to keep insisting upon his view and compelling the other to accept it. Gentlemen, if we did not have any other jurisdiction of the equity courts except to restrain a nuisance it would at least seem under that that not only was it necessary that such a power should be exercised to restrain it, but it would be exceedingly unwise to adopt legislation that would seem to prevent the issuance of an injunction to prevent the annoyance of another.

Mr. TIRRELL. Right in line with that I want to call your attention to a very singular case which I have just heard of in Massachusetts—a case where an injunction was issued by a court. A wife had left the husband. The husband was working in a factory, and she called up the office of the factory every few minutes in the day and kept them running to the telephone, and finally, upon petition, the court issued an injunction giving her permission to call him up only three times a week.

Mr. EMERY. I suppose in that case, Mr. Tirrell, that if the dispute between the husband and wife had grown out of the fact that the wife wanted to make the husband wash dishes and he refused, that that being a dispute involving a labor issue, no injunction could have issued?

Mr. FURSETH. You say that one workman follows and annoys another and tries to enforce his views upon him, and that that ought to be enjoined. Who is the party aggrieved in the case, the party that is annoyed or the party for whom the annoyed gentleman is working?

Mr. EMERY. Does the gentleman want to intimate that the person who does the annoying ought to have an injunction to prevent him being interfered with?

Mr. FURSETH. No; I intimate that if there is any injunction possible in such a case it might be asked for on the part of the workman who is annoyed, and not on the part of the employer of that workman. Upon what principle, unless it be a principle that there is a property right is that particular man by the man that employs him, can the employer ask for an injunction?

Mr. EMERY. I am glad you asked that, because I think you have made this morning a misapplication of the theory of protecting property or personal rights. The gentleman seems to assume that when men desire to enter into the service of an employer an injunc-

tion that protects those men in their right to take advantage of service offered is an injunction based upon the theory that before the striker went out of work, quit his employment, the master relied upon the permanent retention of the place on the part of the striker, and that the injunction is issued upon the theory that the master has a property right in the striking workman, and that, inasmuch as he has quit the place of employment, an injunction can be issued to protect another who took his place and supplies the labor as though it were a commodity that passed from one body to the other. If the gentleman did not mean to intimate that, I can not understand the form of the argument which he made this morning.

Mr. FURUSETH. My position is this: That the employer has no property right in the man who works for him, whether he be the man that went on strike or the man who took his place, he can not have any property right in anybody as a man, and therefore no injunction can lie.

Mr. EMERY. I do not see the application, Mr. Chairman, and I certainly do not think any employer has any property right whatsoever in any employee. But I do hold that any man has a right to enter into contractual relations with any other man to work for him, and that opportunity to work for him may, if necessary, be protected by writ of injunction.

Mr. FURUSETH. Does that injunction create a property right?

Mr. LITTLEFIELD. As I understand it, the interference with the employee is not directed to him particularly, but to the employer, and intended to injure the employer through the employee.

Mr. EMERY. Yes.

Mr. FURUSETH. Then your position is that there is some kind of a property right in the employee on the part of the employer?

Mr. EMERY. Not at all.

Mr. LITTLEFIELD. That does not involve that.

Mr. EMERY. You misunderstand my position and the gentleman's position in respect to injunctions as operating to prevent crime. Incident to the issuing of an injunction crime is prevented, just as incident to the raising of an umbrella one may be protected from a brickbat; at the same time, no one would seriously contend that the purpose of the raising of the umbrella was to protect the bearer against brickbats.

The bill known as the Gilbert bill appears to be drawn for the purpose of preventing, it might be termed, the application of the remedy until the wrong has been accomplished. The records of the courts of law and the daily newspapers inform us constantly of cases in which there is immediate necessity for protection, and unless the protection were immediately given an irremedial damage would be done to the person affected.

Yet by this form of legislation it would be impossible to give that protection through an equity court until service had been had upon the persons affected, with all the opportunities which they might have to avoid service of the notice and until a hearing had been had, which would make it practically necessary, if the term means anything, to go into the merits of a case at least to the extent of hearing a sufficient amount of the evidence to judge whether or not an injunction should be issued at all, in which case the personal right or property right threatened would be deprived of the adequate protection of law

pending a hearing and we would have a hiatus in law which would amount to a condition of wrong existing and persisting for which there existed at the time no adequate remedy.

It is of no consequence to give the protection after the wrong has been accomplished, after an opportunity has been had to make an attack upon the person or the property rights, and we would simply be in the position of that proud chief of the village fire department who, when they had failed to save the structure, when the building was entirely consumed by the flames, proudly announced that they had saved the lot. The position of our law and of its fundamental principles upon labor disputes is no longer, Mr. Chairman, a matter open to discussion. It has been settled not merely by the attitude of our courts, but by the findings of the great moral tribunal to which was committed by the President of the United States an adjudication upon a permanent basis of the principles which should operate in the relations between employer and employee in actual circumstances of industry.

The Anthracite Coal Strike Commission was composed of all classes of society. It had upon the commission a representative man, Mr. Clark, the chief of the Order of Railway Conductors, a representative man of the association which Mr. Fuller so well and ably represents here, and he joined in the findings of that Commission; and it can be said to-day that in the matter of the adjudication of labor disputes and in the principles which fundamentally should operate in American industry, organized labor has raised its voice and has joined with other elements in society in laying down the essential and fundamental principles upon which the relation between employer and employee should operate.

(At this point Mr. Emery suspended his argument, and the committee adjourned until to-morrow, Thursday, March 15, 1906, at 10 o'clock a. m.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, March 15, 1906.

The committee met at 10.45 o'clock a. m., Hon. George A. Pearre in the chair.

Mr. PEARRE. We have before us this morning the bills generally called the "anti-injunction bills," and the committee would like to know the order in which the gentlemen desire to proceed in the matter.

Mr. PARSONS. Mr. Emery has not finished his statement, and would like to continue.

Mr. PEARRE. Very well; we will hear Mr. Emery.

ARGUMENT OF MR. JAMES A. EMERY—Continued.

Mr. Chairman and gentlemen of the committee, I shall trespass, I hope, but very shortly upon your indulgence this morning. Before taking up the argument which I was pursuing yesterday afternoon I desire to call your attention this morning directly to a matter of considerable importance, it seems to me, and that is to the declaration that

has been made here on the floor by the proponents of the bill that the Gilbert bill may be properly termed, and that it is an open secret that it is, an Administration injunction measure, and that there has been the whole influence of the Administration here thrown in favor of this bill. The gentleman in reading a statement that would seem to bear out that fact from the President's message omitted a very necessary and important part of it. The President upon the subject of anti-injunction legislation in his message to Congress spoke as follows:

There has been a demand for depriving courts of the power to issue injunctions in labor disputes. Such special limitation of the equity powers of our courts would be most unwise. It is true that some judges have misused this power; but this does not justify a denial of the power any more than an improper exercise of the power to call a strike by a labor leader would justify the denial of the right to strike. The remedy is to regulate the procedure by requiring the judge to give due notice to the adverse parties before granting the writ, the hearing to be ex parte if the adverse party does not appear at the time and place ordered. What is due notice must depend upon the facts of the case. It should not be used as a pretext to permit violation of law or the jeopardizing of life or property.

The very objection which Mr. Mahoney made to this bill yesterday was that it was a question whether or not it would be possible to issue a restraining order where there appeared from the allegations of the complaint and where, as a matter of fact, there was no adequate remedy of law and where there was irreparable damage threatened, and the committee, if it accepted the bill placed before us, would leave a hiatus in the law, and there would be absolutely no equity power to protect property threatened with injury.

It may, then, safely be said, gentlemen, that if this language could possibly be construed into an approval of the Gilbert bill there is no doubt for one instant that it can be clearly and certainly said that it is an absolute and unqualified disapproval of the terms of the Little bill. In other words, if the Brotherhood of Railway Trainmen demand one kind of legislation and the American Federation of Labor demand another kind of legislation they ask the committee to choose between the recommendation of the President of the United States and the recommendation of the president of the American Federation of Labor.

Because of the wide range of discussion on this question, because of the absolute different and essential principle which has developed between the opponents and proponents of this bill, there has been a range of discussion broader probably than the particular subjects under discussion, and for that reason there has doubtless been a continuous temptation to depart from the technical discussion of this bill and to substitute for it a criticism, and, if you please, a vindication of some of the essential principles which the proponents of this bill represent and which they believe to be the essential principles, not only on which the Government of our country is founded, but the essential principles in law, in equity, and in morals which the courts of our country have always administered and protected and which have been protected by the American courts ever since the term "court" has had significance and meaning.

The gentleman yesterday in the discussion of this bill sought to cast a sneer on the use of the injunction by endeavoring to present it as a weapon which had always been used by the more powerful members

of society against the weaker and less powerful members of society, whereas gentlemen who are familiar with the conditions under which the injunction came into existence, in which the chancery power of the court was established, will remember it was in its essence a direct appeal to the King to protect the subjects against powerful overlords who in the days of Edward the Third very frequently influenced tribunals by force and threats and terror; and it was the purpose of chancery, it was the idea of the King's justice, to substitute for the will and the threats and the intimidation even of sovereign princes a law that should be so flexible as to fit every situation of the case; and so down through all the uses which equity has had in English and American law it has fulfilled that function which can not be fulfilled by any amount of statutory legislation, which, no matter how the mind of man may attempt to conceive and formulate laws to meet all sorts of conditions and circumstances, would find itself absolutely unequal to conceiving every possible occasion to-day or to-morrow, much less in the years to come, that could cover the threats, the intimidations, the attacks and trespasses that may be made upon essential personal and property rights.

So we have an equity jurisdiction which, considering all the circumstances of the particular case, appealing to that court for protection against injury and damage, and for the vindication of essential rights, endeavors to supply a legal remedy, a remedy in morals, if you like, which flows into all the circumstances of the case and covers them as adequately and completely as water flowing into an irregular-shaped vessel would fill into any crevice, interstice, and form itself to all the circumstances and situations of the containing vessel.

Legislation that would have as its purpose the deprivation of Federal courts of that power which they possess to-day to fit the remedy to the wrong would be a long step in the direction of taking from the courts and throwing into the field of politics, if you please, the essential principles upon which the Republic itself is founded, and those essential principles, the protection and vindication of which are not merely necessary for the protection of this Government, but of all government and all civilized society—the right of a man to work, the right of a man to sell his labor, the right of a man to enter into a labor market and buy labor offered freely and willingly to him, the right of a man to live his life free from annoyance, the persecution, the intimidation, the coercion, and even the undesirable persuasions of others—is a right that partakes of the very essentials embraced in our Declaration of Independence—the right of life, liberty, and the pursuit of happiness—which principles were laid down by the fathers of our country as the essential things upon which the Republic rests.

I spoke yesterday for a moment of the findings of the Anthracite Coal Strike Commission, and I know that you gentlemen are familiar with the findings of that great tribunal. I know that the people of the country are aware of the essential principles upon which that tribunal predicated its decision. It was a remarkable tribunal; a body of men representing every class of society—the law and the laity, technical information, scientific knowledge, practical business knowledge, as well as the requirements of organization in industry, both of labor and of capital; it sat for over three months, heard 558

witnesses of every kind and character, visited the scene of the discussion, familiarized itself by actual investigations and contact with every scholastic, economic, industrial circumstance that surrounded the life of the mine worker.

They went down through the streets of the towns in which the miners lived, they entered the homes in which their families lived, they went into the schools in which their children were educated, they descended into the mines and familiarized themselves with all the conditions under which they earned their living, and with all this mass of information before them, with the advice of counsel, with the advice and suggestion and argument of distinguished labor leaders, these gentlemen gave not merely to the Government of the United States, but to the people of the United States, as the last word of an eminent public moral tribunal composed of men of distinguished character its findings upon that remarkable case, and endeavored, as they had been requested by the President, to find a just and permanent basis upon which to settle future industrial difficulties.

The facts found in that case settled the anthracite dispute, but the principles there laid down are applicable and will be favorable to every dispute between master and servant that may occur in this country and that must be judged in the spirit of American institutions and traditions and by American law. That tribunal criticised and criticised bitterly—and to that criticism was attached the name of the distinguished and representative labor leader on the Commission—the abuses and actions of which in that particular industrial difficulty organized labor had been guilty and of which in frequent circumstances throughout the United States its individual members or its organizations have given cause for criticism.

The boycott, the strike accompanied by violence or by compulsion or by coercion, were condemned in the most unmeasured terms, not merely as invasions of the individual liberty of particular men, but as practices which, if permitted to continue, aimed at the destruction or subversion of the essential principles of our Government itself. The right to remain at work where others have ceased to work, said the Commission, and the right to take up a new work which others have abandoned is part of the personal right of every citizen and can not be surrendered, and every attack upon it merits and should receive the just condemnation of the law. The very purpose that these gentlemen must have in applying for legislation that will strip the courts of the power to interfere where personal rights or personal property are attacked in labor disputes is to relieve them of the possibility of the interference of law to take from the man damaged the shield of justice interposed between the attacker and his victim.

The gentleman said to you yesterday that the two chief weapons of labor were and always will be the strike and the boycott. In practical operation the strike and the boycott, as viewed through the eyes of men of experience, have not changed in all the hundred years of their use. You who are familiar with the writings of Dickens should remember the description of what might be properly called the original scab, Steven Blackpole, and you should remember the description of the man who might be called the original agitator, who appealed to his fellow-workmen, the downtrodden operators in *Hard Times*, and those characters are true to life to-day. You probably remember

in Charles Read's *Put Yourself in His Place* an organization endeavoring under the name of labor to commit crime in order to obtain its ends, a picture that applies as strongly and as clearly and as accurately and as truly to-day in some labor disputes as it ever did.

And outside of the whole vast body of American labor represented by the distinguished president of the American Federation of Labor, and that still more splendid body of railroad employees represented by the gentleman who so ably presented their case yesterday, remember that there is in this country to-day a body increasing in numbers who are preaching doctrines subversive of all civil society, and under Eugene Debs are condemning and damning day after day every civil institution upon which either American or human liberty itself is based.

Criticising the judicial authority of the West that is investigating crime committed against numerous citizens of Western States and culminating in the assassination of an ex-governor of a Western State, himself an officer of the trades union at one time—that is, Mr. Eugene Debs, appealing to the industrial workers of America—he declares in their official organ, "We can not appeal to the courts; they are in the hands of the plutocracy. We have appealed to them in vain, and I for one say it is useless to further expend money or time in going up against a brace game judicially."

So long as there are thousands of men in the United States who believe those things and whose lives are moved and carried on along the lines of the essential principles carried on by such declarations as that, is it wise, would it ever be wise to disarm the judiciary of the power to protect threatened liberty and property?

The gentleman said here yesterday that because an employer sought an injunction to protect his right to a free market, to a reasonable expectation, as some of the acts have expressed it, of the opportunity to hire labor that was willing to work, because he protected himself by an injunction against interference by his workmen, the purpose of which was to injure him, that that was a declaration of a property right on the part of the court in the man in whose favor the injunction ran. Gentlemen, if any employer in America has ever declared a property right in human labor since the days of the civil war I can not find it in any single dispute that has ever arisen between the employers of labor in this country and the labor organizations with whom controversies have arisen, and I do not wish to be understood for an instant as defending employers as a class any more than I would be willing to be thought of as criticising laboring men as a class.

God knows I have earned my living with my hands, and in days gone by I acquired my education by the same means, and I should be the last to criticise any man who honestly endeavors to avail himself of every opportunity the Republic affords, and I want to see those rights protected in the individual, whoever he may be, and that is the very purpose we have in protesting against legislation of this kind. The gentleman who suggested that we are declaring that employers felt that they had a property right in workmen must have been unaware that the most remarkable example of a declaration of a property right in the earnings of workmen has proceeded recently from one of the most distinguished leaders of labor in the United

States—one John Mitchell—in the name of the United Mine Workers of North America.

He demanded as one condition of the agreement between the members of his association and the operators of the anthracite coal region that there should be taken from the pay, not only of union men, but of every man in the employ of the operators, a sum of money each month equal to what his dues would be in the union. If that is not a declaration on the part of the president of the United Mine Workers of North America that he believes the organization he represents has a property right in the wages, not merely of union men, but of nonunion men, I would like to know why it is not.

The gentleman says that labor organizations—Mr. Gompers declared it again yesterday—do not seek and never do seek to use compulsion. He disagrees with an eminent leader in his own industrial department just as broadly as he disagreed with another eminent leader in the White House yesterday. Mr. John Mitchell has said, in his book on organized labor and in an article which he contributed to the Saturday Evening Post as to the closed shop—I do not remember the exact language, but I will stand for this as substantially his statement—that it was true that organized labor exercised a very real compulsion, and he went on to say that he did not think in the future, some time in the future, there would be any more objection to compulsory methods on the part of organized labor than there would to compulsory vaccination by public authority.

In other words, he sought by the labor organization a possession of the police powers which the State is sometimes compelled to exercise, but never does exercise except in a grave emergency, and he would make it an ordinary exercise on the part of organized labor. And after the Anthracite Coal Strike Commission had made its memorable findings the New York papers published interviews with Mr. Mitchell in which it was held by him as a victory, and a great victory, for organized labor; and yet by that decision was condemned one of the most injurious and common practices which we know accompany every labor dispute—the secondary boycott—and condemned in terms which, if I should use as my own language, I might be accused of radicalism and extremity; and remember the labor leader in that Commission joins in that condemnation. He even goes so far in the report of the Anthracite Coal Strike Commission as to say that—

It was attempted to defend the boycott by calling it a contest between employers and employees, a war between capital and labor, and pursuing the analogies of the word to justify thereby the cruelty and illegality of conduct on the part of those conducting a strike. The analogy is not apt, and the argument founded upon it is fallacious. There is only one war-making power recognized by our institutions, and that is the Government of the United States, and of the States in subordination thereto, when repelling invasion or suppressing domestic violence.

The very term, the very nomenclature of "strike," indicates a belief on the part of those in it that it is an act of war. The Anthracite Coal Strike Commission says:

The practices which we are condemning would be outside the pale of civilized war. In civilized warfare women and children and the defenseless are safe from attack, and a code of honor controls the parties to such warfare which cries out against the boycott we have in view. Cruel and cowardly are terms not too severe by which to characterize it.

Mr. FULLER. I would like to ask you will you not read a little further and see what that same Commission has to say about the blacklist?

Mr. EMERY. I trust the gentleman does not think I am here to defend the blacklist. I am simply reading that part of the Anthracite Coal Strike Commission's report which I think applies to my argument, as Mr. Fuller thought yesterday he was at liberty to read that part of the President's message which he thought applied to his argument. No man can condemn the blacklist more severely than I do. It will not find advocacy in me or anything I represent. The Anthracite Coal Strike Commission condemned also a theory which appears to be a theory adopted in some quarters——

Mr. DAVENPORT. If this Grosvenor bill were passed, I would like to ask whether it does not legalize the blacklist in the same way that it would legalize the boycott, so far as the laboring men are concerned?

Mr. EMERY. It would appear so, but when they order a strike they take into their hands a two-edged blade, and I suppose they proceed on the theory that if they succeed in cutting the throat of their opponents they take a chance of slashing their own.

The Anthracite Coal Strike Commission condemned the very theories upon which the position of organized labor is based referring to a particular industry, and that is because the majority of the employees of a particular industry claim the right to control the work of the minority even with respect to the conditions of their employment. The Anthracite Coal Strike Commission, in reply to that, declared that the analogy between the powers of a labor organization and the United States Government were not acquired and did not proceed from the same fundamental moral or social perception, and, furthermore, it quoted very strongly the language of Abraham Lincoln, that no man was good enough to govern another man without his consent, and that is the sheet anchor of republicanism.

Allusion has been made to the frequent violence that has accompanied labor disputes. The gentleman must admit that a strike and a boycott necessarily implies compulsion, and yet we find the definition of "strike" is a peaceable quitting of work in order to obtain some desired end. The right to quit work on the part of any and all men, provided there is no violation of contract, is a right that no man questions. A justice of the Supreme Court in the Arthur Oakes case went so far as to say that even if human life itself were imperilled by the quitting of switchmen or flagmen or signal-tower men on a railroad under no circumstances would a court of the United States keep a man in involuntary servitude—even if it did imperil human life thereby. To such lengths have the court gone.

But, gentlemen, there is one condition in a strike which is always left out in a definition given of it by the men who represent the proponents of this bill, and that is accompanied with the quitting work there is always the idea to prevent others from taking the places which the workmen who quit vacate, and that is absolutely essential to the winning of any strike. Now, the prevention of the taking of those places may be by peaceable persuasion, which is proper and legal and which no man can in anyway criticise, or it may be accomplished by continuous intimidation, coercion, and threats, and per-

suasions which, in the city of Chicago, have amounted in practice to the idea of getting a thing into a man's head through a hole in his skull. It is not necessary that any man should for one instant—God forbid that I should—accuse the vast body of laboring men of favoring or desiring to conduct their organizations with crime, lawlessness, or violence, but it is the inevitable action of tendencies and principles which humanity having once put into operation can not control that result from dangerous teachings in the fruit of dangerous actions.

History tells us that not 2 per cent of the French revolutionists were in favor of violence, and yet that 2 per cent have made the story of the French Revolution, have made it a tale of blood and terror without a parallel in the history of the world, a revolution that filled the gutterways with the blood of the slain, and that worshipped upon the high altar of the cathedral of Notre Dame a prostitute. Gentlemen having put into operation a dangerous principle become responsible for the forces which they can no longer control in its operation. Does the gentleman think that for one moment he can teach that employers as a class are bitterly opposed to any advancement or progress or betterment upon the part of the men who work for them, and then believe that the men whom he thus instructs will look otherwise than with anger and antagonism and hatred upon the objects of those teachings?

Why, the gentleman talked here yesterday, representing the American Federation of Labor, as though the American workmen are in a condition beside which the Russian serf is not to be compared. And yet there has never been a time, I believe, in the history of the United States when labor everywhere in the United States had such tremendous deposits in the bank and was evidently in possession of so much cash and as much prosperity. The employer who has no respect for the rights of his workmen is, I think, in a very, very small minority in this community. To say that any class of men in the United States are bitterly opposed to the advancement of any other class is to destroy the very story and progress of the Republic, because the very gentlemen who sit about this table, dozens of the very men who sit in every House of Congress, are men whose life is the story of the man of exceptional ability, or even ordinary ability but exceptional industry or integrity, or who took advantage of opportunities which the institutions of the country afford, who have elevated themselves into seats of authority and influence and power.

That is the story of most of the great leaders in our Republic. Mr. Mitchell's theory that once a wage-earner always a wage-earner is a story of despair and hopelessness. A wage-earner of to-day may become a mighty and successful industrial leader of to-morrow. The steel magnates of the United States are an illustration of that, the very men who sit in either House of Congress are another illustration, and it is the story not of yesterday or a hundred years ago, but the story of to-day repeated on every street corner and in every store, and the man who improves himself, who has lifted himself by taking advantage of the opportunities our institutions afford is the last to shut the door of hope in the face of him who is beneath him.

I represent organizations of laboring men, and I have the right to say that there are organizations of laboring men unaffiliated with the

American Federation of Labor that have organized for the purpose of protecting themselves against what they believe to be encroachments upon their personal and private liberty. The National Association of Stationary Engineers is an example; numerous members of citizens' alliances and industrial associations throughout the country are further examples of it, and the most powerful and convincing example of all is that with all its influence, with all its power, with all its opportunities of advancement, there are to-day over 25,000,000 wage-earners in the United States who are not affiliated with any labor organization and who represent in many of their products the very highest forms of mechanical ingenuity in labor, the men who form the Brotherhood of Locomotive Engineers, one of the organizations which Mr. Fuller so well represents here, day after day riding in their cabs without questioning whether or not the men who sit with them are members of a labor organization or not.

Their grand chief and grand master stated only recently in his address, in Connecticut I think it was, that he believed that the open-shop principle was the best principle for the Brotherhood of Locomotive Engineers, and you do not hear of the Brotherhood of Locomotive Engineers attempting to coerce or force or urge or persuade by questionable methods men to join their labor organization. No; because the organization has become so attractive that men are glad to get into it, because it represents a high grade of efficiency and skill, and the membership in it is an honor. And no man can better express the very feeling which is represented by the opponents of this bill here than did Mr. Thomas Fitch, the vice-president of the Brotherhood of Locomotive Engineers, when a year or two ago at the annual convention at Los Angeles, Cal., when he said that he believed the trust magnate who violated the law and the striking teamster who slugs his fellow-workman because he doesn't have on a union button ought to be marching in lock step together in the penitentiary. That is the kind of stuff that makes an organization great, when it stands for principles like that.

I was surprised, and I must confess it, at what we learned from the distinguished gentleman who represented the American Federation of Labor here yesterday, a man whom we have come to regard as the Gladstone, if you like, of the labor movement, the grand old man of industry and organization, representing 2,000,000 of American workmen, the voice of labor, the Chaucer of unionism, the well of union principle undefiled. From his lips we had the astonishing example that the practices which are sometimes indulged in by his association had even contaminated his courtesy and good nature.

You can not imagine for one moment, gentlemen, that men can not intimate, suggest, insinuate policies of intimidation and coercion, however well intentioned they may be, however strongly they may desire to have others believe, and to impress even the men who practice their doctrine that such things as they suggest are to be done delicately, lawfully, and legally. It does not profit us that Mr. Gompers is in the city of Chicago declaring that organized labor will never stand for violence or criminal lawlessness when the officers in that labor union in that very city are hiring a slugger and paying him out of the funds of a union treasury to kill on the streets of Chicago men whose only crime is that they desire an opportunity to earn a living for themselves and their families, without agreeing

with Mr. Gompers in principle, and Mr. Gompers came in here yesterday fresh from the city of New York, where he has been several times in conference with the Housesmiths and Bridgemen's Union, and where he knows that the record there is one of dynamiting and outrages that would disgrace lawless Russia, where hundreds of assaults occur on the streets of which no record appears in the newspapers or police department.

And he comes here and tells us that he will under no circumstances tolerate violence. Can Mr. Gompers show us an instance where he has ever recommended that any union man notoriously connected with violence and questionable methods has been suspended, expelled, rebuked, or dismissed from a labor organization even after the money of the labor organization had been used to defend him in the commission of a criminal offense and who had been found guilty by a jury of his peers? What would gentlemen think of any employers' movement that for one moment dared to defend the crooks of high finance and any system that attempted for one moment to claim that a corporation was entitled to possess an excess of this power? What would he think of us if we came here and said we represented employers and demanded that corporations should be put outside the operation of anti-injunction law?

Does any gentleman think for one instant that when gentlemen form themselves into an organization of any character that they can by a curious chemical composition produce a new combination that is not amenable to law and should be relieved from the application of certain laws? Senator Hoar believed when the antitrust act was passed that it would not apply to labor organizations, doubtless because the venerable and able Senator from Massachusetts did not consider at the time that a labor organization might form itself into a trust in labor just as capitalistic organization might establish a trust in material. Does the gentleman think it is possible to create any sort of human organization and by stamping a particular label upon it that it will always be that which the label declares it is? If it were so, gentlemen, we would have to pass an adulterated-food law against the labeling of corporations.

And the gentleman in conclusion, after an argument of considerable length, in which he had sought to express his legal views upon the matters before this committee, finally enunciated the principle and declaration that he believed, and the association which he represented believed, that no court of equity had a right to issue an injunction in a labor dispute. That question, gentlemen, is not open to discussion. The principles that give protection to property rights and personal rights, as well as the courts of our country in a thousand cases, have settled that thing so well and so clearly and so strongly that that can not be resurrected as a discussion to-day.

We can not debate with a man who does not believe that there is any such thing as free will as to the responsibility of man for a moral action, and you can not debate the propriety of injunction legislation with a man who declares that he believes that an injunction ought not to issue in a particular class of cases. The gentleman would probably not deny that the court ought to give protection to an individual whose personal or property rights were threatened when there was no adequate remedy at common law; but when he says that injury to property threatened by anything that bears the form of a labor

organization or proceeds from any dispute involving master and servant then the operation of the law to give protection should be stopped, that is a peculiar and strange doctrine; and if it come finally—as it must if the gentleman persists in his view, and he is, he says, a layman, not a lawyer, and yet he is supplying legal views to thousands of American citizens who look with respect and veneration to him—if the gentleman is going to maintain those principles insist upon their application, then ultimately there may come an unfortunate disagreement between the courts of our country and Mr. Gompers as to what the law means.

And what then? Will Mr. Gompers bow to the decision of the court or will he hold himself a tribunal of appeal from even the decision of the Supreme Court of the United States and illustrate by that action that, in view of all the legal discussion that has been had here on a variety of cases, a lawyer's ways are beset with difficulties all the way from the courts of original error to those of ultimate conjecture?

Mr. Gompers, in concluding—and I am going to stick to the conclusion this time and conclude myself—illustrated, first, the feeling against the mass of employers, apparently with whom he disagrees, and painted a picture I should hate to think as a human being were true, and concluded by making what he doubtless thought the chief argument of the day in favor of the passage of this bill—that it was demanded; and when all other arguments fail, the voice of force is potent. When Mr. Gompers declared yesterday, in terms of that character, his opinion as to the last and ultimate form of argument that could be used for legislation of this character, he betrayed the pitiable weakness of his case.

Mr. PALMER. Which bill are you talking about?

Mr. EMERY. He demanded the Little bill, and said he would not take anything else.

Mr. PALMER. Before you conclude I wish you would give us your views about that bill—what you think about the propositions contained in it.

Mr. BRANTLEY. That is the old bill we had last winter.

Mr. EMERY. That is the Grosvenor bill.

Mr. DE ARMOND. Bill 4445.

Mr. EMERY. That is the bill which prohibits the issuing of injunctions and legalizes conspiracies.

The gentleman, in conclusion, then made a statement which, if made, gentlemen, by any lawyer for a railroad corporation or any other corporation in the United States before any Senate or House committee as an argument against railroad legislation, would have called for a hemorrhage on the front page of every yellow journal in America, and wound up his discussion by declaring that if this Congress did not pass this bill there might be other Congresses. Ah! Ah! The gentleman knows full well that the threat is empty; that on any appeal to law and order the great mass of the working people of America are as sound as the other classes and can be depended upon to form a judgment that will vindicate their American citizenship. The gentleman, when he made that threat, knew that he was as impotent to accomplish it as was the keeper of the harem, to whom he compared the employer, to violate the responsibilities of his custodianship.

Mr. FULLER. I would like to ask the gentleman a few questions, if there is no objection.

I do not understand that you meant it that way, but I am afraid the impression has gone out that you did. You spoke of this lawlessness and the connection of Mr. Debs with that class of men. Do I understand you to mean that the advocates of this bill are in any way allied with Mr. Debs or follow him in his doctrines?

Mr. EMERY. No; I would not insult you by suggesting it; but I was calling the attention of the committee to the fact that these very gentlemen you are condemning by implication represent a class which, if this protection were removed, might be the first to take advantage of it.

Mr. FULLER. Is it not, in your opinion, a fact that the failure of Congress to act in regard to this question is furnishing great argument for Mr. Debs and the people who advocate his doctrines? Don't they use that as an argument for another system?

Mr. EMERY. Yes, Mr. Fuller; and I have heard the argument made by a labor leader on behalf of his men to an employer that unless their demands were granted he would not be responsible for what they would do to the property.

Mr. FULLER. I asked the question in regard to Mr. Debs. The question was this: Did you not think that the failure of Congress to act in regard to this legislation gave the Debs people an argument in the way of propagation of their theories; that they rather used it as an argument for a change of system rather than for remedial legislation?

Mr. EMERY. I can not see that, indeed.

Mr. FULLER. You seem to lay great stress upon violence, and I wanted to ask you if you thought any one of these bills before the committee would legalize violence?

Mr. EMERY. I mean to intimate by all I have said in that regard that it is notorious that as an accompaniment of strikes there is a temptation to violence to which even the best of men may naturally resort, and if this were passed it would take from the court the power to interpose and give the only adequate protection which circumstances have suggested to us could be secured in the event of the happening of these very things.

Mr. FULLER. Do you think this bill would legalize what is generally called a crime?

Mr. EMERY. Which bill?

Mr. FULLER. Any one of these bills?

Mr. EMERY. Not the Gilbert bill; that does not legalize it. I think the other bill so far as it legalizes conspiracies would have a dangerous tendency in that direction.

Mr. FULLER. I mean do you think it would legalize violence?

Mr. EMERY. The Gilbert bill unquestionably would afford opportunities for attacks on property to go without adequate legal protection. I hope the gentleman does not think for an instant that I think an injunction is for the purpose of preventing crime or is an extension of criminal law when used by a court.

Mr. FULLER. No; do not misunderstand me. I spoke wholly on the question of criminal proceedings.

Mr. EMERY. Yes.

Mr. FULLER. Do you think any one of these bills would legalize violence on the part of anybody?

Mr. EMERY. It would come dangerously near it in regard to the anticonspiracy bill.

Mr. FULLER. And you could not answer yes or no to that question?

Mr. EMERY. I think it would have a dangerous tendency in that direction. The idea is this, if you please: That the injunctions used by courts are preventive remedies and they are called into existence to give a protection to attacks upon person or property and incidentally and accidentally they operate to prevent the commission of acts of violence which would otherwise occur in the attacks made either upon the personal liberty or the personal property of the individual aggrieved.

Mr. FULLER. I understand, but my question was wholly on the question of prosecution under criminal law. Would any of these bills take away from the authorities the right to punish a man for a crime that he is now punishable for under the law—that is, for violence?

Mr. EMERY. I don't think that; no; directly, no. Indirectly the moral effect upon State laws with respect to conspiracy, or even to United States statutes with respect to conspiracy, might have that very dangerous effect. I do think that at the time when it is apparent that the full force of the court's law is required it is a very dangerous thing to repeal the power of the courts in that regard, especially when the attack is very largely made upon the very integrity of the court itself, and that legislation, basing the reason for it upon that argument, would be a distinct reflection upon the court itself and would have a dangerous tendency to destroy the confidence of the people in that branch of our Government.

Mr. FULLER. Did I understand you to say that you represent some labor organizations? I did not so understand in the beginning, but later you said something of the kind, I think, and I would like to ask whether you would care to say what organization of labor you represent?

Mr. EMERY. I said that I had the right to say that I represented labor in organizations; for instance, the Industrial Citizens' Association, in St. Louis, composed of 11,000 members, and I do not think over 3,000 of them are employers.

Mr. FULLER. But you represent no labor organization as such?

Mr. EMERY. Not as such; no.

Mr. JOB. I would like to ask whether the speaker knows whether or not the American Federation of Labor, either one or two years ago, voted from its treasury financial aid for the defense of Moyer and Heyward and others of the Western Federation Miners?

Mr. EMERY. I think that is a matter of record. Mr. Gompers would be the highest authority in that case, and I know the committee can appeal to him and secure the information; and I think he will say that there was a question as to the manner in which the thousand dollars was expended. I think Mr. Mitchell, of the United Mine Workers of America, also contributed.

Mr. DAVENPORT. The statement was made yesterday that a distinguished judge of the United States, former Senator Quarles, had announced that he would not grant any more injunctions without a previous notice of hearing, and I will ask the gentleman whether or

not he has any definite information on that subject from Judge Quarles?

Mr. EMERY. I am glad you mentioned that. I would like to say that when this newspaper states, and when it also appeared in the American Federationist, that Judge Quarles had declared that he would never issue a temporary injunction without notice and hearing that I wrote to Judge Quarles and told him that I desired to be informed on the rules the courts made from time to time in regard to such things, and I received the following letter:

UNITED STATES COURTS.
EASTERN DISTRICT OF WISCONSIN.
Milwaukee, February 16, 1906.

JAMES A. EMERY, Esq.,
New York, N. Y.

DEAR SIR: Your letter of 13th instant at hand, and in reply beg to state that no rule on the subject of injunctions has been promulgated by me. Neither has there been any official declaration or ruling on the subject in my court.

Sometime since, having issued a restraining order in an important case, wherein I got an erroneous understanding of the facts from an ex parte statement and was compelled to issue a second restraining order against complainant, in conversation with some attorneys, after the matter was disposed of, I remarked that hereafter I proposed to exercise greater care and caution in the matter of restraining orders and to call in the other side informally, where it could be done in important cases, before issuing any temporary injunction, etc.

I was not aware that any newspaper man was present, and the matter was not intended for publication. In some way the reporter learned of the remark and started sensational articles distorting and enlarging the statement, and I have been much chagrined by the erroneous publications.

Now, I have given you the exact facts in the case, as I recognize your right to be informed in the premises.

Very truly, etc.,

J. V. QUARLES.

[Telegram.]

NEW YORK, March 13, 1906.

Mr. J. A. EMERY,

Neir Willard Hotel, Washington, D. C.:

•You are authorized to represent this association at the hearing before Judiciary Committee on anti-injunction bills.

BUILDING TRADES EMPLOYERS' ASSOCIATION.
WM. H. MCCARD, *President*.

NEW YORK, March 13, 1906.

HON. JOHN J. JENKINS,

Chairman Judiciary Committee,

House of Representatives, Washington, D. C.

DEAR SIR: We, the undersigned, members of the Typothete of the City of New York, an association of employing printers and publishers, beg you to use your influence against the enactment of the so-called anti-injunction bills now before the Judiciary Committee of the House of Representatives. Neither the Gilbert bill nor the Little bill will be of service in the pacification of labor troubles. They will make these troubles worse, for they are positive incentives to lawlessness.

Recent writers have deplored this increasing tendency to lawlessness. The cause seems apparent. Never before were thieves, forgers, incendiaries, highwaymen, and murderers so well provided with legal means of escape from punishment. Never before have trustees of money been so surrounded with opportunities for wrongdoing. Every law that favors release from individual responsibility and allows individual wrongdoing to be imputed to a society in

its corporate capacity tends to make the wrongdoer go too near the danger line, and even to go beyond it.

Awed by the clamor of labor leaders, many States have repealed or made ineffective the old conspiracy laws which every civilized community has found necessary for its protection. Unfortunately, the trade unions that have profited most by this unwise legislation are not incorporated, and too often escape punishment for malicious mischief and violation of common-law rights.

They have been so petted and pampered by indulgent legislators that they consider themselves a coordinate or superior authority in government. Typographical Union No. 6, of this city, and its 400 associate unions, binds every member by an extra judicial oath to obey a union order when it is in opposition to civil, ecclesiastical, or political laws. It practically claims superiority over statute law. It is this arrogation of supreme power that actuates the leaders of the Italian Black Hand and that leads to similar results. The tolerance by legislators of the mischief-making powers of unions is a serious mistake, for it has led to arson, maiming, and murder.

The benefit that unions may have accomplished in the increase of wages could be offset by statistics showing the loss of life and of property and the increased antagonism between employers and employed that invariably have followed the repeal of conspiracy laws and the clothing of trade unions with privileges that are denied the individual. This deference to unions rests on a flimsy basis. The members of unions constitute but about one-fourth of the working force of the nation, and more than half of their members are restive under the tyranny put upon them by their leaders. It is not the peaceable member, but the mischief-seeking leader that clamors for anti-injunction bills. Is it not a mistaken policy to legislate exclusively for the benefit of these leaders?

The injunction order, now sparingly used, is the great safeguard of the employer against the machinations of oath-bound conspirators who secretly plot the destruction of his business. It is an employer's right that should not be delayed or denied. The theory of lawmaking is the prevention more than the punishment of wrongdoing. To wait for the commission of felonies or high misdemeanors when this commission can be prevented is not the practice of a civilized government, but this procedure is favored by these anti-injunction bills.

The anti-injunction bill strips the judge of his power to quell trouble at its beginning. It is a practical order to employer and trade union to fight out their quarrel to a finish between themselves. Law will not interfere. Is it a wise policy to allow either side to make and execute law for itself? An employer will surely resent this neglect of duty by a judge whose business it is to see that justice shall be done. It should not be expected by legislators that manufacturers who have spent years in the building of useful industries will meekly accept orders from an irresponsible trade union about wages, hours, and shop rules, in whose making they have no voice, or that they will submit to the infesting of approaches to their shops by "pickets" who annoy and sometimes assault the free men who offer to take their places, to the boycotting of advertisers and customers, to the malicious damaging of machinery, and to frequent outspoken and printed declarations that they intend to coerce the employer to submission by every means in their power. Is it wise to give additional power to passionate men who have proved their inability to use with discretion the limited power they now have?

Harmony between employers and employed will not be had by anti-injunction bills. Attempts at harmony must begin, not with the legislators, but with the unions themselves. When unions give up the policy of the closed shop and attempts to prevent employment of free men there will be no clamor for anti-injunction bills, and there will be less of arson, maiming, and murder before the courts.

Yours, respectfully,

Theo. L. De Vinne & Co., Burr Printing House, Star Electrotpe Co., Brown, Lend & Pelt, Mergenthaler Linotype Co., W. N. Columbine, Sackett & Wilhelms Litho. and Printing Co., The Methodist Book Concern of the City of New York, A. K. Brewer & Co., Paterson Press, Wm. Green, Grannis Press, L. Middleditch Co., Hill Publishing Co., The American Printer, Styles & Cash, Iram H. Blanchard & Co., Bates Advertising Co., John C. Rankin Co., W. T. Vanden Hooten.

STATEMENT OF MR. LOUIS L. DRAKE, REPRESENTING THE NATIONAL PAINT, OIL, AND VARNISH ASSOCIATION OF THE UNITED STATES, 27 WILLIAM STREET, NEW YORK.

Mr. DRAKE. Mr. Chairman and gentlemen, I shall not impose upon the courtesy you have extended to me by attempting to add anything to the arguments that have already been presented to this committee at this and previous hearings against the legislation under consideration. Those arguments from men versed in the law and better able than I to point out the legal defects of the proposed legislation, and from men whose business experience as employers has brought them into contact with the physical conditions which would be affected by the bills, have covered, I believe, every point that has been raised by the advocates of the measure and every point that its provisions would suggest to its opponents.

My appearance here as the representative of the National Paint, Oil, and Varnish Association is simply to give personal utterance to the protest of its members against the passage of these bills. This association is a federation of local organizations in the larger cities of the United States, and has a membership of about 700 firms and corporations, most of which are manufacturers and large employers of labor. While they have perhaps suffered as little as any other class of employers from troubles with unionized labor, our Chicago members have at least had personal experience with the lawless tyranny of unions, and their experiences actuate the sentiment of the more fortunate members, who fully realize that exemption from these troubles can not be guaranteed them, and who appreciate the necessity for safeguarding the interest of the employer at least to the extent of continuing to him the protection of the courts which these bills aim to destroy.

The necessity for that protection has been made plain to you gentlemen by the history of labor struggles which have been placed before you at these hearings, and which, indeed, are plainly put before every man who reads the daily papers. The men whom I represent do not oppose the organization of labor, nor do they believe that a man should be compelled by law, or by any force other than the necessities of himself and his family, to work when or where he does not wish to. But they assume that it is not possible by injunction or any other process of law to make service under any particular master compulsory, and equally they assume that the man who desires to work for any particular master should not be prevented from so doing by law, unless it be invoked to prevent the violation of a contract. Certainly he should not be prevented by force, and it is to restrain the force that has been so often employed for this purpose that the intervention of the courts is asked, as affording a method less violent and more efficient than the physical restraint exercised by police or military power.

The organization which I represent asks you gentlemen to seriously consider how badly the employer who is financially responsible for his acts, and who is generally law-abiding, is handicapped in dealing with irresponsible and lawless mobs which make violent interference between him and his employees. Except for the restraint which has been extended by the mandate of the court, employers and loyal employees, in every case where injunction has been issued, I believe, would have been powerless to maintain the relations into which they had mutually entered.

It is because of this realization of their possible dependence upon the courts for the protection necessary to enable them to carry on business at all, in the event of strikes in their works, that those whom I represent and thousands of other employers similarly situated protest against the enactment of this legislation. I ask you, therefore, in the name of the National Paint, Oil, and Varnish Association, to add the numerical strength of that organization and the standing and importance of the industries which it represents to the weight of protest already lodged with you against the passage of these bills, for the reasons, obvious to you, which make it a menace to the rights and interests of every employer and every man who desires to control his own services.

STATEMENT OF MR. HORACE KENT TENNEY, OF CHICAGO.

Mr. TENNEY. Mr. Chairman and gentlemen, I appear here at the request of the Chicago Typothetæ, an association of printers and publishers, and I must assume that these gentlemen have asked me to come because they thought that a matter before the Judiciary Committee had in it perhaps some tinge of professionalism which would make the presentation of one side of the case better if conducted by a lawyer. Since I have examined these bills and given some attention to them, since I have heard the discussion upon both sides here, I have come to understand more clearly than I did at first that this question which is before you here is one in which every man as a citizen must necessarily take an interest, and that no man who is a citizen in the real sense can fail to appreciate that the propositions here presented concern him in a very personal sense.

I am not here to make a demand upon you as to the manner in which you should exercise the judgment which your position enables you to exercise and makes it your duty to exercise; I regard the use of the word "demand" as out of place in a discussion before those who must be presumed to have full sense of their responsibilities. I can only present to you, not with any backing of a demand, some considerations which have impressed themselves deeply upon me, and present them to you only as lawyer to lawyers, as a citizen to other citizens who occupy an official position.

Mr. PEARRE. Which of these bills do you refer to?

Mr. TENNEY. I speak more particularly, Mr. Chairman, with reference to the bill 4445, which is entitled "A bill to limit the word 'conspiracy' and the use of injunctions and restraining orders in certain cases."

It can not be doubted that this is class legislation. Indeed, it is openly proclaimed as such. Even if the consideration of the terms of the measure did not itself disclose the fact, it is class legislation; it is designed, programmed, arranged in the interest of one class and against another. The first speaker who spoke yesterday in advocacy of the bill appreciated that, and appreciating also the good policy in a controversy of taking up at once a proposition which is clearly apparent upon the other side, spoke of it as class legislation, and spoke of the trouble which often came to a measure from having a name given to it.

Now, gentlemen, I shall not stop in the short interval which any speaker can claim here for his own audience to enter into a technical

argument as to whether it is, in any view, within the power of Congress to pass this law; for when there has been justly applied to it the phrase "class legislation," I think something has already been said and something admitted upon the other side which places upon them what we lawyers call "the burden of proof." For whether it be within the inhibition of the provisions of our organic law or not it is within the spirit of the Constitution, which says that the laws shall be equal to all. I have always enjoyed that strong and forcible phraseology in which that part of our fundamental law has been summed up by the Supreme Court when they said that "the equal protection of the laws is a pledge of the protection of equal laws." Does this law violate that spirit of the Constitution so that it comes within the class of legislation of which in one of these cases which arose under the Sherman Act Mr. Chief Justice Fuller said in a recent case—

Acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

The proposition which underlies the bill here is that there should be discrimination between litigants in the courts; that one man should have in court a remedy which his fellow-man is denied, and that this should be accomplished by affirmative legislation, taking from one man the remedy which is still left free to another. In what way are these classes arranged by the theory and the provisions of the bill? First, they are arranged as employing and employee classes. The phrase has been used here "capital and labor" as though the controversy, as it is called, between capital and labor was one to be settled by provisions in a law which shall deny to one the opportunity of a hearing in court. I hate that phrase, "controversies between capital and labor" as applied to hearings in court. For as a lawyer and as a citizen—as a lawyer who has studied the law, as a citizen who admires the maintenance of the law—I hate to think that the rights of manhood, the rights either of person or property in the scales of American justice, are weighed with a golden counterbalance, and I like to think that in reality we not only have organized our Government upon the basis of freedom and equality before the bar of justice, but that we seek to maintain that equality against even insidious encroachment.

Is it right upon any theory of equality in law that there should be discrimination in rights, discrimination in the right to a hearing in court between employer and employee? Is it right, fundamentally right, that an employee who does that which brings him within the condemnation of any law, either civil or criminal, should have a right to do it as against his employer and not have a right to do it as against some one else?

In what other respect does this law classify litigants and arrange their rights to a hearing in court with reference to that class? It is, I suppose, upon that part of the bill that the right of Congress to legislate at all can be defended, if it can be defended—"that no agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or not to procure to be done, any act in contemplation or furtherance of any trade dispute between employers and employees engaged in trade or commerce between the several States," etc.

So that the employers and the employees between whom this discrimination is made are to be those who are engaged in commerce between the States. Now, in the references here to the troubles that have arisen in litigation of this kind, there has been more frequent mention of cases involving the railroads, and yet we all know that the railroads are not the only corporations or industries engaged in interstate commerce. Indeed there are but few industries which in some part of their operations are now engaged in interstate commerce, and there is now on trial in Chicago one of the most notable cases of the time arising out of the violations of interstate-commerce laws and regulations by those who are not common carriers. So that you will see that there is again a classification here by which those who are simply engaged in interstate commerce are denied the remedies which are left free to others.

Is the legislation designed, in making that classification, to touch the subject-matter which by the Constitution is made the exclusive object of Federal control? We see at once that it is not; that the controversy or trade dispute which is to be affected by this legislation is left entirely outside in the provisions of the law. There is here no provision as to what shall be the right in court of employee or employer with reference to that dispute. There is in this bill no provision as to what the dispute shall be; there is here an entire absence of any attempt to legislate only with reference to those matters which do cover or do touch upon interstate commerce, an attempt only to classify those who may engage in interstate commerce, and to take from them, in any dispute which they have, the right to the ordinary remedies of the law.

Is that, again, class legislation of a dangerous tendency? Why, gentlemen, you will recall what was said in the similar case of *The United States v. Knight*, 156 U. S., page 1, in which it was sought to extend the operations of the Sherman Act to the sugar trust, and there it was contended that the operations of that law covered those engaged in interstate commerce, so that it prevented the sugar trust from buying up the stock of corporations in the different States, thus securing a more complete monopoly. And one of the things which was said in the opinion of the court upon that subject is that—

“Slight reflection will show that if the national power extends to all contracts and combinations in manufacture, agriculture, mining, and other productive industries whose ultimate result may affect external commerce, comparatively little business operations and affairs would be left for State control.”

Is this, therefore, gentlemen, anything but class legislation in which the classification is designed to touch not upon that which gives your body jurisdiction, but merely, by the pretense of bringing into operation that portion of the Federal law, to take from certain persons their inalienable right? Upon what does the jurisdiction of the court depend in a very large part of these actions in which injunctions have been granted of which complaint has been made? Upon interstate commerce? Not at all. Upon diverse citizenship. So that if a man is engaged in interstate commerce and has, not because of that fact, but because of a controversy with a citizen of another State, a right of action against him, he is denied the remedies which he now has by the law, and the other man is left free to do that which he

could not do against that complainant if he were not engaged in interstate commerce at all.

Now, passing from that—

Mr. PALMER. Before you leave that position, I would like to ask you a question.

Mr. TENNEY. Certainly.

Mr. PALMER. Do you think that Congress has no power to enact class legislation, or do you argue that it is not a matter of policy to do so?

Mr. TENNEY. It seems to me very clearly to be not a matter of policy to pass it, and I would change that phrase around a little and say it was a matter of policy not to pass it. It is my own judgment that Congress has not power to pass class legislation of this character, which will deny the equal protection of the law to the citizens of this country.

Mr. PALMER. You say it has not power to pass class legislation, on the ground that one class would have opportunities that the other class would not have. That is your argument?

Mr. TENNEY. Yes. I would be willing to concede, what I think possibly may be running in your mind, that there may be cases under the Federal power in which some limitation upon the right of a party is incidental to the legislation, and therefore it may be within the power of Congress. But that which is designed expressly to create classes of parties who shall have different rights in litigation in court, it seems to me, is inconsistent with the spirit of the Constitution in that particular to which I refer.

Mr. TIRRELL. I would like to have your views in regard to this language. It says that "no agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute," and then, farther down, "or between employers and employees who may be engaged in trade or commerce between the several States, etc." Now, does trade dispute include labor disputes, as, for example, the regulation of the hours of labor? Has there been any definition by courts of what "trade dispute" covers?

Mr. TENNEY. Answering your last question first, I do not know of any; I do not know of any definition of "trade dispute," and I have assumed in my argument here, without criticism of the phraseology of the bill, that it was designed to accomplish that which its advocates think it will accomplish. That is to say, when an employer has any kind of a dispute with his employees, no matter what it may be over, no matter how just or unjust one side or the other may be, that it is a "trade dispute" between employer and employee, and therefore the provisions of the law will apply to it.

Now, gentlemen, I will pass from this suggestion which I have made with reference to the policy or power of enacting this bill into a law to another phase of it. It seems to me very clearly to be a bill designed to legalize that which is now unlawful. I do not say that it gives express Federal authority to the slugger, to the man who is willing to sink his manhood by violence toward his neighbor; but it is designed, and it will, if enacted, accomplish its design of taking away certain rights which are now recognized as rights existing under the law, as we know the law; and the purpose of it is aimed at those

wrongs which exist by virtue of combination and which are accomplishable only by means of combinations.

And the underlying idea of those who present this bill for your consideration is that, if enough men can be got together to render successful that which they desire, it is legal for them to do what they desire, unless the act if done by one man would itself be not merely unlawful, but, in the wording of this bill, "punishable as a crime." Now, what is the law? Is there a law with reference to combinations and to the responsibility of combinations, a law I mean—I speak of it largely with reference to the anti-injunction feature—a law which applies to the civil remedy?

MR. PEARRE. Would not that be corrected, Mr. Tenney, I suggest, by an indictment for unlawfully assembling by the common law; for instance, would there be a criminal law which would equal the remedy which you would get by injunction?

MR. TENNEY. I was intending to speak of that later. I will simply say now that I can not conceive of any proper system of jurisprudence in which criminal punishment is regarded as a remedy to an injured party. Now, let me first, continuing the line of thought upon which I started, venture to use the words of some one who may speak with more authority because he is a well-known legal writer, Bishop, in his work on "Non-contract law," page 151. He says:

"Conspiracy, in the proper, restricted meaning of the word, and viewed as a tort, is a malicious combination of two or more persons to injure another in person or property in a way not competent for one alone, resulting in actual damage to him."

And Mr. Justice Harlan in the case of *Arthur v. Oakes*, which has been referred to, speaking of this right of combination and the dividing line between the lawful and the unlawful, says:

It is quite a different thing in the eye of the law for many persons to combine or conspire together with the intent, not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others or the public. An intent upon the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent, but a combination of two or more persons with such an intent and under circumstances that gives them, when so combined, a power to do an injury they would not possess as individuals acting singly has always been recognized as in itself wrongful and illegal. *Arthur v. Oakes* (63 Fed. Rep., p. 310).

That was the decision of the court of appeals, and lest it be suggested that that is not a court of ultimate resort, and that Mr. Justice Harlan, speaking for that court, has only the authority of that court for his decision, I refer to *Aikens v. Wisconsin* (195 U. S., p. 194), which involved this question of combining, in which the opinion of Mr. Justice Holmes says as follows with reference to this idea that an act which, when done by one with impunity, carries with it through all stages and places where it may be used the same immunity:

But an act which in itself is a mere voluntary, muscular contraction derives all its character from the consequences which will follow it under the circumstances in which it was done. When the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously, can not be denied, because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which

It may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.

We have had mention here, upon both sides of what is a controversy before you, of this weapon of the striker—the boycott. I have found no case in the books which detract at all from the force of the decision of one of the Federal judges, in which he says there is no record of an application to a court of equity to restrain a boycott where the relief has not been granted. But if we may with safety rely for precedent upon that which has not the sanction of judicial authority, but has the sanction which comes from sound sense, from a hearing by both sides in a manner not possible in a court where the parties alone—the parties to the record—have opportunity of being heard; if we may look for sound judgment in such decisions, surely the decision of the anthracite coal-strike commission is one to whose words we should always give heed.

And I think I can not, I never could hope to, state so well the underlying principle and the emphatic condemnation of the boycott as it was expressed where the Commission deals with it. They precede this by a statement of the right of the “scab” to work, and, speaking of his right to work, of his absolute inherent right to work, notwithstanding he takes the place of a man who desires to become temporarily an idler, they say—

This all seems too plain for argument. Common sense and common law alike denounce the conduct of those who interfere with this fundamental right of the citizen. The assertion of the right seems trite and commonplace, but that land is blessed where the maxims of liberty are commonplaces.

Then they say about the boycott:

It also becomes our duty to condemn another less violent, but not less reprehensible, form of attack upon those rights and liberties of the citizens which the public opinion of civilized countries recognizes and protects. The right and liberty to pursue a lawful calling and to lead a peaceable life, free from molestation or attack, concerns the comfort and happiness of all men, and the denial of them means the destruction of one of the greatest, if not the greatest, of the benefits which the social organization confers. What is popularly known as the boycott (a word of evil omen and unhappy origin) is a form of coercion by which a combination of many persons seek to work their will upon a single person or upon a few persons by compelling others to abstain from social or beneficial business intercourse with such person or persons. Carried to the extent sometimes practiced in aid of a strike and as was in some instances practiced in connection with the late anthracite strike, it is a cruel weapon of aggression, and its use immoral and antisocial.

To say this is not to deny the legal right of any man or set of men voluntarily to refrain from social intercourse or business relations with any persons whom he or they, with or without good reason, dislike. This may sometimes be un-Christian, but it is not illegal. But when it is a concerted purpose of a number of persons not only to abstain themselves from such intercourse, but to render the life of their victim miserable by persuading and intimidating others so to refrain, such purpose is a malicious one, and the concerted attempt to accomplish it is a conspiracy at common law, and merits and should receive the punishment due to such a crime.

In social disturbances of the kind with which we are dealing the temptation to resort to this weapon oftentimes becomes strong, but is none the less to be resisted. It is an attempt of many by concerted action to work their will upon another who has exercised his legal right to differ with them in opinion and in conduct. It is tyranny, pure and simple, and as such is hateful, no matter whether attempted to be exercised by few or by many, by operators or by workmen, and no society that tolerates or condones it can justly call itself free.

Gentlemen, what is a boycott? Is the boycott an act? Is the boycott something in which there is an agreement or a combination "to do an act in furtherance of a trade dispute which, if done by one alone, would not be deemed criminal and punishable as a crime?" We all know that it is. We all know that the essence of it is combination; we all know that it is possible only by combination; we know that only by combination, only by getting men to withdraw that social intercourse with their fellow-man—the particular fellow-man who is the object of the attack—that social intercourse which is essential to his life, can a boycott be successful; that its purpose is to accomplish evil; that its purpose is to make the victim, by the awful pressure which no law can impose upon him, yield to the demand which is made, no matter whether that demand compels him to do something which he ought to do without coercion or to sacrifice some absolute right. It compels him in any event to sacrifice the right of guiding his conduct by the dictates of his own judgment.

Now, what is the effect of the boycott? It never would be used if not effective. It is spoken of in the commission's report as "a cruel weapon of aggression." It is a weapon; designed as such; used as such. Its origin shows its use and its design. Its use, under its more modern form—the sympathetic strike, shows how it has often grown in its use, outgrowing perhaps the expectations of the men who started the original boycott against Captain Boycott. What is the effect upon the employer? Sometimes concrete cases are better than abstractions. We had last summer in Chicago what was called the "teamsters' strike;" and I can hardly expect in speaking of it that I am speaking of something unfamiliar to any man who lived in America last summer. What was its origin?

A certain firm there in the preceding fall had had a dispute with 18 garment workers over some question of hours or wages, I know not what. Those men had been out of the employment of that firm during the interval and had gone to other places and gotten other jobs; and yet, in a technical sense, the proposition that "once a strike, always a strike," and that a strike is an everlasting thing and can outlive even the lives of the strikers, made it possible for those who present this idea of affiliation to go to that firm and say: "Unless you settle that strike"—which had been settled by its obliteration—"unless you will agree that you will take back men who are members of that garment workers' union and unionize your shops, we will strike." And who were "we?" Teamsters, the men who had no connection with that business except that they hauled its goods through the streets.

Of itself that would seem to be at once rather taking upon themselves a matter in which they had no concern, a matter which they could in fairness leave to the settlement of those who ought to be able to settle their own difficulties between themselves. But what followed that? At once when the demand was refused those teamsters struck, exercising an undoubted right, whether their reason was good or bad, whether their reasons put them in the attitude of good citizens or men who have no gray matter above their shoulder blades. But what followed that?

At once the command is given out that any man who deals with that objectionable firm shall himself be put under the ban of organized labor; that any man who sells goods to that house or buys goods

from them shall have his men called out upon a strike merely for that fact; that any man who attempts to deliver by the teams which he owns goods to that house shall have his men called out; that any common carrier who hauls goods (express companies) for that house shall have its men called out; that no man shall be allowed to deal with the original object of the attack or with anyone who will not agree to withhold from the offending person all forms of trade intercourse. The extent of such a thing, if successful, no words of mine are needed to portray. There was the assertion of the right, there was the assertion of the principle, and there in the Commission's report is the assertion of the condemnation of that principle and of its operation, if it needed anything but the exercise of our own honest-minded judgments upon the inherent injustice of such a thing.

What, gentlemen, is the effect of this boycott upon the working-man?—for it is directed against him as well as against the employer. Again, we have it in the language of the Commission's report. But have any of you seen how it is carried out in practice, how the man against whom, as a person, no objection is ever raised or can be raised, is hounded through life, characterized as a "scab," hounded so that everyone, by fear of some kind of trouble, is induced, as far as their fears can control their judgment, to withhold from him the most common intercourse of life? Have you seen the scab assailed in his home, have you seen his children in schools maintained by public funds assailed with the word "scab," attacked as being unworthy of association with other children because their father drove a team and did not wear the union button? Have you seen those forms of insidious attack upon his right to exist, and which do not include those forms of violence and bloodshed with which we have become so familiar?

And is this no invasion of his rights? Are we here to discuss in an ethical and technical and an abstract sense the question of who should be the party to apply for the remedy which the law says is appropriate to the wrong committed against him, or should we be sure that we pass no affirmative legislation which will give the stamp of legality to that which we know is wrong? Should we in discussing the question whether that thing should be authorized by law, when we know it is unlawful, put ourselves in the attitude of the Sunday school boy who, when called upon to define "faith," said it was "believing what you know is not true?"

Now, gentlemen, I wish to speak of one other feature of this bill, and that is that it deprives the courts of the power to grant the only effective remedy which is appropriate to a wrong, which the law recognizes and condemns as a wrong. And that is a matter to which the question put me a moment ago by the chairman has more direct pertinency. Those who say "Do not enjoin crime, but punish it," "Do not enjoin anything which, if not a crime, is still a tort, punish it, enforce against it a legal remedy," it seems to me can not understand the underlying principle upon which courts of equity have acted in granting the injunction, nor can they understand the difference between private remedy and public prosecution.

Taking the last of these first, is there the same right of action in the State that there is in the private party when an act has been done which is within the condemnation of the law? Sometimes there is a right in both, and each right is independent of the other when both

exist. The prosecution for the crime has no influence or effect one way or the other, no matter what its results may be, upon the private remedy of the party. The State is not concerning itself, in prosecuting a man for a wrong against the law, as the representative of organized society, with the remedy which may be given to the particular individual injured by the wrong; it is concerning itself with the wrong to society. And, on the other hand, in granting remedies to the individual who is injured, it is not taking into consideration the question of the moral aspects of the act as fixed by the criminal law, although sometimes it gives to an act which has criminality or intentional wrong connected with it greater punishment in the way of exemplary damages.

Mr. PEARRE. Do you contend, as a matter of law, that there is an equitable remedy against crime in this country?

Mr. TENNEY. I would put it this way, if you please—

Mr. PEARRE. That is what I understood you to declare.

Mr. TENNEY. I would put it in this way: The equitable remedy for a wrong is irrespective of the criminality of the act; that an act is a crime is neither a reason for granting or for refusing an injunction—

Mr. PEARRE. Is there any equitable remedy against a crime?

Mr. GILLETT. After or before it has been committed?

Mr. PEARRE. Before it has been committed.

Mr. TENNEY. There is no remedy for a crime before it has been committed.

Mr. GILLETT. The burning of a man's building is a crime.

Mr. TENNEY. Yes, sir.

Mr. GILLETT. Suppose I knew that several men were conspiring to burn down my house, would I have a right to enjoin them from that act?

Mr. TENNEY. I should think so.

Mr. GILLETT. It would be a crime for them to burn my building?

Mr. TENNEY. Yes; and so also it is answered by the decision of the Supreme Court in the Debs case, to the effect that because the act complained of is a crime is no reason for refusing a remedy by injunction if the remedy by injunction is otherwise applicable.

Mr. TIRRELL. Is not one of the principal objects of the punishment of crime the prevention of crime? Would there be any particular object in many of the criminal prosecutions if it were not for that?

Mr. TENNEY. It is undoubtedly to some extent preventive in its purpose; that is, it has always been the hope that the example of the consequences of the crime, in a very practical sense here in this world, would deter others from doing the same thing.

Mr. TIRRELL. What justification is there in hanging a man for murder, for instance, if that is not the principal object?

Mr. TENNEY. When you get to the question of how severe the punishment shall be, you get, it seems to me, Mr. Tirrell, into questions which do not quite touch the question of equitable remedy.

Mr. TIRRELL. Equitable procedure is for precisely the same object, for the prevention of crime, is it not, in the enforcement of either a temporary or permanent injunction?

Mr. TENNEY. I would not put it that way; I would put it this way—and I think in putting it this way I am not using any original language, but simply paraphrasing that of the courts: When an act

is done which has particular reference to a special man, giving him what we call in our legal phraseology a right of action, his civil remedies for that act are not affected by the fact that the act may be a crime which the state may punish when it is consummated; and the whole theory of equitable relief by injunction is the prevention of the commission of the offense, not to remedy it by granting something after it has been done, thus giving a sort of license to do it, with the idea that it can be remedied thereafter.

Following, for a moment, that line of thought, I have only to suggest to you that it has always been the theory of a court of equity that it could grant an injunction only because there was no other remedy; that allowing the act to be done and then seeking to compensate in damages still left the party stripped of his rights and, in a position where a court could see at a glance—all men could see at a glance—that he was still wronged and still not compensated. And if we are to lose sight of the fact that equity in granting injunctions proceeds upon that maxim of fireside equity that prevention is better than cure, we are to lose sight of a principle of the law which is as evident and as well settled as any that I know of. I would suggest in that line of thought, too, that we are in these modern days getting better ideas of the manner in which we can prevent crime, and getting different ideas of mere punishment—

Mr. BROCKETT. I want to ask of the speaker in connection with the question put by Mr. Gillett, whether this question as to the existence of a criminal punishment for an act which it is practical to enjoin is not precisely the same as where a punishment is provided for the act as a criminal act and at the same time a civil remedy for the damage inflicted? For instance, in the case of arson, is not the right to sue for damages coexistent with the criminal punishment of the crime?

Mr. TENNEY. It is coextensive. And I was going on to say that we are getting better ideas now in the matter of preventing crime than in the old days when punishment was all the law knew.

Mr. PEARRE. Along the line of the question just asked by the gentleman, is not the very basis of the application for an injunction the necessary allegation that there is no remedy at law and not that there are concurrent remedies—one in criminal law and one in civil law?

Mr. TENNEY. That is true.

Mr. PEARRE. Then the gentleman's illustration would not be a happy one.

Mr. TENNEY. That is why I say, in response to his suggestion, that the remedy might not be adequate; and if you take the case of a trespass, the particular kind, like the burning of a house, or the burning of a building which had an established business in it, irreparable damage far exceeding the value of the destroyed property would almost inevitably be occasioned; and therefore the fact that there was a remedy to some extent at law would not oust the court of equity of its jurisdiction.

The injunction is sought for not merely to prevent the commission of the crime as such, but the injury that results from it, which is an entirely separate matter.

Mr. GILLET. It would not be very much of an answer to a bill in equity, alleging that A and B had conspired to burn my house and asking for an injunction to prevent them from doing it, for them to come in and say: "That is all right; we are going to burn your house, but you can prosecute us for arson and sue us for damages afterwards."

Mr. BRANTLEY. No protection whatever in the matter of the house being burned.

Mr. TENNEY. I think, gentlemen, if we remember that old phrase of the law, "the extremes of the law are not law," that we will not get much practical benefit in a decision of this question by imagining extreme cases in which we might or might not apply the rule. We have the concrete case, of a damage which the courts recognize as a proper subject of equitable interference because of the inadequacy of the legal remedy, and we all know, as a matter of fact, there is no legal remedy in any sense that may be called, by an honest use of the word, a practicable one.

It was stated in argument here yesterday by the distinguished man who represents the American Federation of Labor that there should be none of this "persuasion" which, he says, carries with it the implied threat; that this "persuasion" by the man who has the uplifted club in his hands is something which he does not stand for and something he does not seek to justify; but he says that that kind of "persuasion" should not be enjoined; that the club should be allowed to fall and the "persuasion" to be emphasized by the blow, with no interference to prevent it, which seems to me a good deal like saying that it is better to bind up a wound than it is to prevent its infliction. But are we not—to conclude a thought that I had not quite fully expressed—are we not getting some better ideas of the manner of enforcing remedies of this kind?

Are we not giving to the Government the right of proceeding against combinations by a bill in equity? Are we not recognizing in the establishment in many of the States of juvenile courts and institutions of that kind, which are designed to get at the root of the matter, the desirability of preventive remedies rather than punishments, realizing that punishment is not effective? And when we have imbedded in the law, growing with the law in all its stages, this idea of preventive remedy, and the idea that prevention is better than cure, even when cure is possible, when we have that as a principle of our national and our State law, are we proceeding upon safe grounds when we pass a law which gives an affirmative right to disregard, a right which has thus been created by the law, and in giving that affirmative right, and that affirmative sanction to the violation of a recognized legal principle, giving, I say, that right to one class and as against one class?

Mr. FULLER. As I understand, Mr. Tenney, you concur in the sentiment expressed here that an injunction is a great additional benefit along with the indictment and trial by jury. Do I understand you rightly, that it is an additional benefit?

Mr. TENNEY. Yes—an additional benefit?

Mr. FULLER. Yes; to the one who uses it, or, rather, to prevent these acts.

Mr. TENNEY. I do not regard it as an additional benefit. I regard

t, in the case in which it is applicable, as substantially the only benefit. Suppose you used the word "benefit" in the sense of remedy?

Mr. FULLER. For argument's sake, then, place it as a benefit alone.

Mr. TENNEY. I should prefer the word "remedy," because that has a definite significance in connection with this matter.

Mr. FULLER. That being true, that the injunction is such a great remedy in your opinion, would any law which would grant that injunction to a certain class of people and withhold it from others be class legislation; would that be equal protection under the laws?

Mr. TENNEY. Answering it first in a general way, I should say no.

Mr. FULLER. That it would not be class legislation?

Mr. TENNEY. No; I did not mean it that way. I should say that in general to grant a remedy by injunction to one class and to withhold it from another would be class legislation. Now, what is your application?

Mr. FULLER. You are familiar with the interstate-commerce law, and especially with the bill that passed Congress, I suppose, which grants additional remedies by injunction. You are also familiar with the Sherman antitrust laws. They permit certain things to be enjoined, and no other statute that I know of in the United States permits things of that nature to be enjoined. They are, however, made criminal in some statutes. But in this particular class of cases the shipper has not only the right of indictment and trial by jury, but he is also granted this additional protection or remedy, as you may term it, in the way of injunction. Now, what would you say, as a lawyer, as to the provisions in the interstate-commerce law and the Sherman antitrust laws with regard to class legislation, if my understanding of that is right?

Mr. TENNEY. Let me first ask you is this remedy by injunction given to the shipper or to the Government as the means of enforcing the law?

Mr. FULLER. It is given to the Government for the benefit of the shipper.

Mr. TENNEY. It is given to the Government for the benefit of the public.

Mr. FULLER. And the shipper.

Mr. TENNEY. And the right of indictment is not the right of a shipper. It is the right of the Government for the benefit of the public, in whose interest the law is enacted; and you lose sight—if you will permit me to use that expression—you lose sight, both in putting the question and in the view which the question shows you possess, between private remedies and public remedies—between the private remedy of the party, which even can not be taken away under the sanction of the Constitution, and the remedy of the public, which is independent and entirely separate from it, for the violation of a public law injurious to the public.

Mr. FULLER. To make myself clear, then. Of course you know by this time without my informing you that I am not a lawyer—

Mr. TENNEY. I would not have known it from your argument yesterday.

Mr. FULLER. I want to get it right. I want simply to suggest that the fact has been argued very strongly that not only property rights, but personal rights, should be protected; men should be protected

from bodily harm. Now, admit your position is right as to the Government restraining the shippers from doing certain things under the interstate-commerce law. It benefits the whole Republic.

Now, then, it is a fact that there is a safety-appliance law on the statute books, which was passed for the benefit of the employees of those same carriers and for the public who travel over their roads. There is a remedy there in the way of criminal prosecution, but there is nothing in that law that says the Government can enjoin that road from running its trains in violation of that law. Is it not a fact that property rights or financial conditions have received the greater consideration at the hands of Congress in the act to regulate commerce, due to this injunctive power granted to the Government, than the public have as to those things which affect their life and limb in any other act? Do you consider that that is class legislation, or unequal, or unfair?

Mr. TENNEY. I do not regard that as class legislation. The question of whether Congress should add to the beneficent effect of the interstate-commerce law by saying that a carrier shall not conduct his business until he complies with a regulation of the Commission is a question about which many people now disagree and is a question for further legislation, and not a reason, whichever view a man may take of it, it seems to me, furnishing ground for criticism upon any of the positions which I have endeavored to state here or justification for the theory of this bill, regarded only in the light of class legislation.

Mr. FULLER. Now, as to the Sherman antitrust law. That not only affects the carriers, but it affects other people. There is the power to enjoin. The circuit courts are plainly authorized by that act to enjoin the things called criminal in that act. Do you call that class legislation?

Mr. TENNEY. No; that is a remedy given for the benefit of the public at large.

Mr. FULLER. I ask you whether you do not think that is class legislation, because it favors certain people who are affected, while there are other people who do not enjoy the benefit of this injunctive power that has been so strongly upheld here?

Mr. TENNEY. I must say that I can not see why when the Government has the right to do something it can be said that in doing it it does it for the benefit of one class rather than the other. It seems to me when the Government is given power to enforce some remedy, in enforcing it it acts as the representative of all classes; and I can not admit into my mind, as a thinkable proposition, the idea that what the Government may do it does as the representative of anything less than the whole body of the people who created the Government.

Mr. FULLER. But speaking now as a matter of policy, for a moment leaving the constitutional feature of it, the injunction has been advocated here as a means of protecting human life in a strike, for instance. Is it not right, then, that Congress when it passes a law for the protection of human life and limb should also put into that statute an injunctive power as an additional remedy?

Mr. TENNEY. Do you mean to give the right to the Government to enforce by injunction the—

Mr. FULLER. For instance, the safety-appliance law; would you say in addition to the penalty that the Attorney-General may appeal to

the circuit or district courts of the United States, and that they shall have power to enjoin violations of this act?

Mr. TENNEY. Now, what is your question; whether that would be class legislation?

Mr. FULLER. Put those two cases alongside of each other, one where property rights are involved and the other where personal rights are involved, or a man's own body and limb, his life, the safety of his life. If the life and limb are as important as has been advocated here by the proponents of this bill, that they should be protected by injunction, is it not class legislation when Congress will protect property rights by injunction and will not protect life and limb? I am not finding fault; I just want to put the two cases side by side—

Mr. TENNEY. I wanted to get the question, whether they were the same.

Mr. PARSONS. We have quite a number speakers to be heard, Mr. Chairman, and I suggest that we be allowed to proceed.

Mr. TENNEY. I think I can answer the question. I think you overlook this. You are assuming that Congress has passed a law giving an affirmative right to the remedy by injunctions, and in another class of cases giving the right to the remedy by the interstate-commerce law. The first proposition is not true; the right to injunction depends upon the general principles of the law.

Mr. FULLER. One more question.

(Mr. Parsons addressed the Chair.)

Mr. PEARRE. Does the gentleman yield?

Mr. FULLER. Just one more question.

Mr. TENNEY. Perhaps you had better ask some other gentleman.

Mr. PARSONS. We have quite a number of speakers, and I do not think those questions ought to be extended quite so far, quite so long.

Mr. FULLER. I only had two, and it took quite a time for us to understand each other.

I will be through in a moment. This is the other question. It has been said that an injunction is an additional remedy. It prevents the crime. Now, I cite this instance: Supposing a man is enjoined from destroying another man's property in a trade dispute, and he is bent on destroying it; he does destroy it. What additional remedy from a financial standpoint has the owner of that property got out of that injunction; does it restore any of his property; has he any remedy at all from the financial standpoint any more than he would have had had there been only the one remedy of indictment and trial by jury?

Mr. TENNEY. The remedies of the law, Mr. Fuller, often prove inefficient, because men, overriding or disregarding the law, array themselves on the side of those who believe there should be no law, and the instance you cite is one of that character.

Mr. FULLER. And he would have no additional remedy, I understand, in such a case.

Mr. TENNEY. I thank you very much for your attention, gentlemen of the committee.

(Thereupon, at 1 o'clock, the committee took a recess until 1.30 o'clock p. m.)

**STATEMENT OF MR. GEORGE F. MONAGHAN, REPRESENTING
NATIONAL FOUNDERS' ASSOCIATION.**

Gentlemen of the committee, the National Founders' Association is the body on behalf of which I have the honor to address you at this time. The association is composed of 525 of the leading manufacturing establishments of the United States and represents a capitalization of over \$500,000,000.

This body was from the beginning conservative in its character and purpose and has adopted as its basic principle the prevention of trouble rather than the promotion of it. It is from experiences of that association, as well as from the records to be found in your courts, that I desire to bring such pressure as may be upon this committee to refuse to ratify the radical demands made by organized labor through the American Federation of Labor and kindred societies, and to request of this committee that it stamp with its emphatic disapproval this attempt to deprive the industries of this country of a protection essential to the preservation of their very existence.

The proposed bill raises two principal issues: First, as to the right of Congress to regulate the judicial power of the Federal courts in the matter of injunction, so as to limit their equity jurisdiction and thereby abolish the application of the principles of equity in all disputes of labor; second, is it expedient that the right of injunction and its protection accompanying it should be withheld from capital, when labor, in violation of all law, is destroying its property without warrant or justification?

The gentleman who has just preceded me touched briefly upon the power of courts to issue injunctions. We approach the query as to how far Congress has the right to regulate this power. I lay it down as my first premise, with authority sustaining the position taken, that the Federal courts of the United States have inherent in them the power to issue injunctions, and that as a coordinate branch of the Government of this country, it has a right to make effective its injunctive process whenever, under the facts submitted, and under the law of the land, it appears necessary. My authority for the statement, if authority is necessary before this committee, is taken from the 158 United States Reports in the case of Debs and cases therein cited. A more careful perusal of that case than can be made in the brief time allotted me will be productive of benefit. I quote only the conclusions of the learned judge, without attempting to follow in detail the reasoning which led to them. In his conclusion, Mr. Justice Brewer, in summing up the decision, says:

Summing up our conclusions, we hold that the Government of the United States is one having jurisdiction over every foot of soil within its territory, and acting directly upon each citizen; that while it is a Government of enumerated powers, it has within the limits of those powers all the attributes of sovereignty; that to it is committed power over interstate commerce and the transmission of the mail; that the powers thus conferred upon the National Government are not dormant, but have been assumed and put into practical exercise by the legislation of Congress; that in the exercise of those powers, it is competent for the nation to remove all obstructions upon highways, natural or artificial, to the passage of interstate commerce or the carrying of the mail; that while it may be competent for the Government through the executive branch and in the use of the entire executive power of the nation to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts

for an inquiry and determination as to the existence and character of any alleged obstructions, and if such are found to exist, or threaten to occur, to invoke the powers of those courts to remove or restrain such obstructions; that the jurisdiction of courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority; that such jurisdiction is not ousted by the fact that the obstructions are accompanied by or consist of acts in themselves violations of the criminal law; that the proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt; that such proceedings are not in execution of the criminal laws of the land; that the penalty for the violation of injunction is no substitute for and no defense to a prosecution for any criminal offenses committed in the course of such violation; that the complaint filed in this case clearly showed an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mail, an obstruction not only temporarily existing, but threatening to continue; that under such complaint the circuit court had power to issue its process of injunction, etc.

Incidentally this answers a question propounded to Mr. Tenney by one gentleman. It was asked him whether it was his understanding of the law that a criminal act could be enjoined by the court. The answer is found in the above opinion. We venture further to say, in passing, that the doctrine is unquestioned that it is not within the jurisdiction of the equity court to enjoin the commission of crimes as such. Something more than a threatened commission of offenses against the laws of the land is necessary to call into exercise the injunctive power of the court. There must be some interferences, actual or threatened, with property or rights of a pecuniary nature, and when such interferences do appear, and when acts criminal in themselves reach that climax where they constitute a destruction of property, the collateral fact that the acts are criminal does not deprive the injured party of his civil remedy. An assault with intent to kill may be punished criminally, but an action for damages may accrue in consequence of it, and the same is true of all other offenses which cause injury to persons or property. In such cases the court's jurisdiction is prayed not for the enforcement of the criminal law or for the punishment of the wrongdoer, but in order that the injured party may have redress in damages. It is no defense to a civil action that the acts of the defendant expose him to indictment and punishment in a court of criminal jurisdiction. So it is in all instances where the court finds it necessary to invoke its injunctive power. The dynamiting of property, the maiming of employees, and a conspiracy to perform such acts may be criminal, but the court, nevertheless, for the purpose of protecting the persons and property of citizenship of the Government, may exercise its equitable powers, and the issuance of an injunction by the court does not prevent the arrest and conviction for the crime committed of the person or persons offending.

Inherent power.—It is of interest to note that Justice Brewer, in declaring the right of that controversy, saw fit to determine the issue, not from the standpoint of statute law as set forth in the antitrust act of 1890, but while recognizing its application to the lawless acts of the unions involved, to determine from the questions at issue and the importance of the principles at stake the doctrine that the United States courts without special authorization of Congress have inherent in them the right and the duty to extend the strong arm of equity's restraint over all men, whether members of labor unions or capitalistic combines, who seek by violence or other means unlawful to inflict irreparable injury upon the property of others.

Now, if the courts have this inherent power and the judiciary is a coordinate branch of the Government with the legislative and the executive—greater than neither, but each paramount in its own given sphere of action—then it would not be within the power of Congress to restrict the constitutional power of our Federal courts so as to prevent the judiciary from extending its necessary protection to a large proportion of our citizenship.

Mr. PEARRE. May I ask what you mean by inherent power, used in that connection—the power conferred by the Constitution which can not be taken away by an act of Congress?

Mr. MONAGHAN. Yes; exactly. Is that answer sufficient without further explanation?

Mr. PEARRE. I think so; yes.

Mr. GILLETT. Before you go into that, this is a very interesting question that was discussed, I think, a year or two ago—this point you are now making. What inherent powers do you refer to? What are those inherent powers?

Mr. MONAGHAN. The general powers inherent in a court of equity, flowing not from statute law, but from the law handed down from generation to generation. The wording of the statute creating the Federal courts of the United States is as follows:

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. * * * The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, * * * to controversies to which the United States shall be a party, to controversies between two or more States, between a State and citizens of another State, between citizens of different States, * * * and between a State or the citizens thereof and foreign states, citizens, or subjects.

Mr. GILLETT. That is the point. If Congress has the right to establish the court, has it also the right to limit its jurisdiction? While it can not affect the Supreme Court in that way, yet if it is left with Congress to establish a court, does it not follow that also there is left with Congress the right to affect its procedure, and so on?

Mr. MONAGHAN. The distinction is this: Congress has the right to establish courts, but Congress can not create them. The courts are created by the Constitution. At the time the Constitution was adopted the Federal courts, though not formally established, were still existent and in such condition that by the dictum of Congress their machinery could operate. They could invest themselves with the power and be superior in the jurisdiction which the Constitution originally marked out for them.

Mr. GILLETT. Then it was the inherent power resting in the court of chancery in England during Lord Eldon's time and down to the time we adopted our Constitution—that is what you mean by the inherent powers of the courts?

Mr. MONAGHAN. Yes.

Mr. STERLING. Is not the power and the scope and the authority of the Supreme Court limited by the laws passed by Congress all the time? And if they can limit in one regard, why not as to injunction?

Mr. MONAGHAN. I don't think Congress has the power to limit the courts when the limitation goes to the essence of the court's equity jurisdiction. As to procedure, yes; but not as a matter that is

inherent in the court itself. Now, it is the spirit of the Constitution that all coordinate branches of the Government should be equal in their respective places, and if our opponents' contention were correct, then the Congress would be supreme over the judicial power.

Mr. STERLING. Now, it would be supreme in legislative spheres, and it is supreme in legislative spheres. It is not the function of the court to make laws, but only to construe them and interpret them, and if your position is right, then Congress is not supreme in legislative features even. Its powers are limited by the powers of the courts.

Mr. GILLET. Do you think Congress has power to take from the circuit court the right to issue a writ of injunction?

Mr. MONAGHAN. No, sir.

Mr. GILLET. What were the inherent rights of the courts in Lord Eldon's time?

Mr. MONAGHAN. In Lord Eldon's time the injunction of the court could issue for the purpose of preventing irremediable harm to an individual for which there was not an adequate remedy otherwise provided.

Mr. GILLET. That is the law to-day.

Mr. MONAGHAN. Yes.

Mr. PEARRE. Do I understand you to say that any courts of the United States, from the Supreme Court down, can have any inherent power which is not given either directly or by implication by the Constitution of the United States?

Mr. MONAGHAN. No, sir; no; and the power which they have, embracing matters of injunction as well as all others, is found in the language of the Constitution already quoted.

Mr. FURUSETH. Was not that more distinctly with reference to property, when you deal with that question as applied to Lord Eldon's time?

Mr. MONAGHAN. I would say so; yes; and at the same time, in the matter now at issue, let me say that I can not distinguish between property and personal rights where the attacking of an employee by a striker, by gun or bludgeon or fist, and the consequent injury means that that employee can not continue his work and thus prevents the employer from fulfilling his contracts.

Let us now refer again to the bill before us, as applied to the principles enunciated. We note that equity jurisdiction by way of redress is denied to all persons and even to the nation itself in matters growing out of labor disputes. The Sherman antitrust act of 1890 declares that all combinations on the part of any persons, in restraint of interstate trade or interstate commerce, shall be unlawful, and that all such persons shall be deemed guilty of crime and punished by fine or imprisonment, and that any person considering himself aggrieved by concerted action on the part of others may invoke the United States Government to enjoin the continuance of such conspiracy. The bill before us to-day seeks to make all such conspiracies criminal and to punish their perpetrators and to restrain by injunction all threatened conspiracies, excepting those involving labor disputes; with the further extension of the law as now operative in all cases involving Federal jurisdiction, whether in restraint of interstate trade or not, that the right of injunction shall cease to vest in Federal courts in any dispute in which labor is involved. The reason why I feel concerned upon the subject of the inhibition contained in

the present bill involving interstate commerce and interstate trade is not because we are interested in any railroad proposition as such, but because if this power, now vested in the courts and in the Government of the United States, is not continued the various manufacturers throughout the country, when interstate commerce or interstate trade is hindered, are necessarily and seriously affected in their output and in their ability to deliver their commodities to customers who purchase them. We protest for the further reason that you thus render it possible for the whole country—manufacturer, clerk, or independent laborer—to be placed at the mercy of labor unions and their leaders. The labor unions demand a change in that law, so that the Sherman antitrust act of 1890 and the injunction it authorizes will affect monopolists or capitalists only, but shall not apply to labor unions. They claim that even if this legislation does constitute class legislation, under the circumstances of the case and by virtue particularly of the abuse of process by the courts, they are justified in petitioning Congress for it. They arraign the courts of the United States for trial and make accusations of partiality and injustice, but they offer no proof to substantiate their claim, and I defy the advocates of this bill now present before this body to show one instance where the courts of the United States have issued injunction against striking union members where the circumstances of riotous assembly, murder, or destruction of property did not compel or justify them.

Which does the greater harm to the public at large, the capitalist forming with others a combination in detriment of trade, or the labor organization, which, by virtue of its brute strength, prevents the transmission of mails and commerce and trade from State to State and from nation to nation? What halo is there above the head of labor unions which should lead any intelligent men to rule that labor organizations can do lawfully those things which, if done by any other association in the country, would be termed criminal and subversive of the very principles of equal rights upon which this Government is founded? The law says that no man, nor association, nor corporation can interfere with the control of interstate commerce or interstate trade; not even a sovereign State in the Union can obstruct it.

Justice Brewer has pithily put it:

It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce.

Now, what do these men ask? They ask, not alone that they be given a privilege which is not accorded to an individual, not alone a privilege which is not accorded to other persons and corporations, but they demand a privilege which, under the law, independent of the statute, the State itself can not assert; and they ask it under an implied threat to Congress. Mr. Gompers knows how utterly futile that threat is; but the habit of threat is so thoroughly imbued in the nature of labor controversies, as at present conducted, that the chief officer of the American Federation of Labor forgets the ordinary courtesies of debate and constitutes himself to-day a living example of those things against which we protest.

We next proceed to discuss briefly the question whether, even if the right to abolish injunctions did vest in Congress, it would be expedient to have that right exercised. I may be pardoned, gentlemen, if I here touch for a moment upon the principles underlying the issuance of injunctions in all controversies. I know you are more familiar with the law which governs, but following out the argument which I have in mind, it is necessary for me briefly to advert to that law. It will be conceded that the law justifies and allows the issuance of an injunction only when one or other of the following circumstances exists: First, where there is lack of adequate remedy at law; second, for the purpose of avoiding a multiplicity of suits; or, third, to prevent irremediable injury to property. Unless some grave necessity can be shown why a labor organization should be freed from these provisions, which are applicable to all citizens of the United States in all controversies alike, this law should indisputably stand just as it is to-day. Let us consider, first, strike difficulties and their remedies, with reference to the multiplicity of suits which may be necessitated in order that any remedy may be applied for injury done. When a strike is ordered by the supreme officers of a labor organization, the word spreads from mouth to mouth and from lip to lip, until the whole country is conversant with at least the fact that there is a strike in operation. Men in Maine cooperate with the men in California; laborers in Florida invite the assistance of others in Georgia; the whole country is aroused, and a product of the struck industry is placed upon the boycott list. A man in Maine is manufacturing an article for sale; a man in California purchases it; the labor leaders in California, immediately upon the edict going forth, call upon their employer and say to him, "A strike is in operation in Ohio against that product, and if you insist upon taking and selling that product then we will have nothing more to do with you, and we will see than any man who trades with you is made to suffer serious consequences; we are a strong body, numbering many men; our influence is felt the world over; follow our dictate or accept the ruin of your business as the alternative."

I care not what particular form that threat may take. It may be couched in the more careful language of a Gompers, or in the more fervid menace of an anarchist, but whatever its form, the effect is felt, and the California retailer is forced by fear to refuse to do business with a citizen of Ohio against whom the club of radical unionism has been raised. Before the works of that establishment in Maine 500 men are gathered; independent workmen apply for positions, and are given them; they leave the works and are brutally assaulted; they are placed for safety in a stockade and fed like so many prisoners. In spite of that, sticks of dynamite are thrown over the fences, property is destroyed, and men are injured even while inside of the works by secret emissaries and molds blown up by bombs placed in them. I may be accused of magnifying the methods commonly employed by labor organizations to force employers to do their bidding. True, in all strikes the picture painted does not prevail, but when we read the record of cases in which governors of States have been assassinated at the instance of labor leaders, and hear confessions of union men involving agitators in riot, murder, and destruction, we realize the menace which constantly proposes itself to the mind of every employer of labor, and the necessity of the

issuance of injunctions to alleviate the difficulty. And let it be remembered that it is not alone by violence that unions operate unlawfully. The threats to the independent workman of violence are frequently sufficient to deter him. The following of the independent workman about the streets day and night, though no word is spoken, is an interference with his rights; the manner in which he is pestered at his home, his wife ostracised, and his children maltreated at school are pictures of those things which, at the hand of unionism, he is forced to endure. Now, when such conditions operate Mr. Gompers confesses that an injunction operating from the United States courts checks them. However radical in his tendencies a man may be, sober reflection tells him to beware of violation of court orders, and stronger than forces of police, more effective than guns of militiamen is the peaceful weapon of judicial authority when lifted in time. This being so, then, gentlemen, why should not the remedy by injunction be used? What counter remedy is proposed? Can the police with clubs or the militia with bullets pacify? Temporarily, yes. But ultimately they result in riot and in bloodshed, and foment the minds of the men so that all reasonableness is lost in the mad fit of resentment.

They tell us to sue the striking unionists and obtain our judgment in the courts for damages against them. We must litigate against 500 men or more engaged in the conspiracy. We can not name them as an organization, because the organization has no legal entity. There is no process of law by which the organization itself may be reached. We have to apply our remedy to each individual. The courts would be choked for years with continual litigation of this character with no hope for final redress, and in the meantime destruction of property involving new litigation continues. Multiplicity of suits, then, justifies our contention in so far as the issuance of the injunction in labor controversies is concerned.

Strikes involving violence or malicious interference with business inflict an irreparable injury. How can a man who has had his establishment boycotted for days, for months, for years, perhaps, recover his former status by litigation, if the boycott and the violence of the strike continue? What remedy is there for him? Is not his damage irreparable? Employees are hindered by club and fist from entering his establishment; men are bribed by paid advocates to refuse their aid; his associates in business and his customers are threatened with financial ruin if they continue their patronage; his property is being gutted and his business prospects ruined. The mere statement carries with it a conclusion, and further illustration is unnecessary.

But, we are asked, is there no adequate remedy at law which can be invoked without applying the extraordinary method of writ of injunction? There has been some discussion on that proposition, and I wish to briefly advert to it. It is undoubtedly within the constitutional power of the United States to prevent interference with interstate commerce or interstate trade. If the statute does not grant relief to the court, the court may act under the common law. But if the courts do not act, or are not called upon to act, then the Government of the United States has the right to call upon its armies for the purpose of preventing these wrongs. Now, which will labor

nions in this instance choose? Will they ask that the peaceable method of injunction be invoked, or will they prefer that the United States Army be stationed about our depots and streets for the purpose of preventing, by actual force and by bullets, the commission of these wrongs?

Adequate remedy at law. Have we such in any proposition involved in almost any strike? The ordinary business concern makes a certain yearly profit. Immediately upon a strike being declared and its product boycotted and its power to produce decreased because of assault upon its employees, and the impossibility of obtaining independent men under those circumstances, financial loss occurs. Whom will the manufacturer sue for that loss? Shall he bring action at law for damages in innumerable suits against his former employees? What one of them would be able to respond in execution for the injury which has been inflicted? The company's plant is dynamited or its product boycotted. Can the strikers respond in damages to the amount of that injury? They tell us here that the criminal courts afford a remedy. Criminal courts, gentlemen, do not afford a remedy, because punishment for crime does not financially recompense the party injured. Not only is no adequate remedy thus afforded, but the manner in which the common law is enforced in some jurisdictions is one other reason why Congress should be reluctant to change existing protection in civil procedure. Many public officials do not occupy positions safe from attack from an interested labor constituency and are not above protecting their own political futures at the expense of an honest administration of the trust reposed in them. Some are dependent upon the labor unionists for the management of their political fortunes—justices of the peace, police justices, and minor officials in our various jurisdictions; not infrequently men of more exalted positions. If you will take the trouble, the next time you return to the various districts in which you live, to look up the record and examine into the criminal prosecutions in our various States, you will find that in many instances there has been and will continue to be always a certain difficulty, first with the service of process, to bring an offending striker into court, and, secondly, with the trial of his cause and the judgment upon it when he gets there. Utica, N. Y., furnishes a striking illustration in a strike which is in operation at the present time. The manner of procedure has been more creditable to the cunning of the strikers than to the fairness of the court. A local judicial officer was associated with the Iron Molders' Union. Men were obtained from other States to fill the place of striking employees. The independents appeared on the street only to be arrested on trumped-up charges, covering all the gamut of misdemeanor. The ordinary procedure was discarded, and the common rights of men accused of crime were brushed aside, the defendant ushered from the street to court, and by the court uniformly given the alternative of either leaving town or being imprisoned for six months. Innumerable instances of similar character might be given where courts have been made the vehicle of oppression to the independent employee and employers, but time presses, and I do not think it is necessary, for this body must be familiar with the workings of unionist machinery in many courts and with many officials in localities dominated by the labor vote.

Mr. PEARRE. Where were your grand juries?

Mr. MONAGHAN. The grand juries often have endeavored to assist in the punishment of crime, but in the meantime lawlessness continues, and even punishment does not restore the ruined business of the victim. A paltry fine is no deterrent force when the business agent steps to the clerk's desk and pays it. In the meantime the associates of the person punished are gathering about the factory, participating with little hindrance in the lawlessness by which they hope to gain their end.

We are told that labor organizations do not countenance crime. Is there any case to which you can point wherein the labor organization has not engaged and paid the lawyers to defend the men who committed crimes ranging in seriousness from simple assault to riot and murder? One word further about indictment by grand juries. The procedure, 'tis true, is more dignified, but let me cite an illustration of its effectiveness. In the city of Cincinnati, at the time of the recent disturbances, we obtained injunctions. On the opposite side of the river, in the city of Newport, many leading officials of the town were either members of the union or union sympathizers, and adequate police protection was not given. Crowds of strikers gathered about the works at night, and men were shot. No definite action was taken by the authorities, no arrests made, except after vigorous protests, when the reluctance of local police forced individual action. On the opposite side of the river, as a part of the same conspiracy, a man was followed about the streets for hours by two men, and was finally shot down on Vine street, one of the most-traveled thoroughfares in the city, by one Patton, a member of the iron molders' union and a picket in its employ. Patton was indicted by the grand jury. Let us see what the consequences were. Was he tried at once? He could not be. He was properly entitled to the same rights and privileges as any other defendant. After some months' delay the cause was finally reached for trial. Six weeks were spent in examining talesmen on the jury, and at the conclusion of the six weeks it became so apparent that a jury in Cincinnati would not be found to try that man, and a change of venue meant such a long delay, that a compromise was forced between the prosecuting attorney and the defendant's counsel whereby Patton, who, under the testimony of 15 witnesses, shot this man down without a word to even aggravate, was allowed to plead guilty of manslaughter and sentenced to twenty years' imprisonment in State prison. I mention this as an illustration, not in criticism of the law, but to demonstrate its ineffectiveness outside of chancery jurisdiction to redress the evil with which, in labor controversies, this country is afflicted. Juries are prejudiced either one way or another. Employers are called upon juries, and they are challenged because of their feeling. Members of the union are called, and they are challenged by reason of their prejudice.

Mr. PEARRE. Then your argument is against the jury system?

Mr. MONAGHAN. No, sir.

Mr. PEARRE. The adequacy of the jury system?

Mr. MONAGHAN. Under given circumstances, Mr. Chairman, it has not been sufficient, and if effective for the purpose of punishing crime, has never been effective for the purpose of preventing it.

Mr. PEARRE. That arises rather from the failure of the administration of the law than the law itself, then?

Mr. MONAGHAN. Largely so, but the law itself, independent of administration, is inadequate as a remedy. I think the law is well connected, but even delayed punishment does not prevent the wrong. Then, too, men are called upon to serve upon juries who do not desire to do so. A grocery keeper, for example, will be excused on account of pressing business reasons. Why? Because he is afraid of the law or organizations and dare not vote for conviction in many cases.

Mr. GILLETT. In a suit, has the question of the jury anything to do with it? Is not the question whether the law has provided any sufficient remedy, which, if properly enforced, would give relief?

Mr. MONAGHAN. Is the particular remedy afforded by the law adequate, if properly enforced? It can not be, because it can not act as a preventive against the commission of the unlawful acts against which we complain. The man may be punished, but that does not bring back to the man who is dead his life, or to the man who is mangled the use of his limbs, or to the person who suffered financial injury the restoration of his property, and he has not the ability to relieve his loss because the party causing the wrong is not financially able to answer in damages for the injury suffered.

I do not think that there can be any doubt but that the law as it stands, in any strike of the slightest magnitude, is not able without the issuance of an injunction to protect our industries.

Another phase of this matter, gentlemen, strikes me as of signal importance. The effect of any act upon the part of this committee with reference to the utter abolition of the right of injunction upon labor organizations can not be exaggerated. I speak to you as men who are conversant with men by your contact with them for years; I speak to you as to those who understand and know the facts which are matters of public note and public interest. We all know that labor unions and labor men in organizations are governed in any trade dispute by their leaders. We make no objection to that fact; their leaders have the right to direct them within the law; but if, declaring the law wrong, Congress should say that the courts of the United States shall not issue an injunction under any circumstances such a dictum in the mind of the average member of labor organization will convey a license to perpetrate those acts which, at present, are restrained by injunction. He is not afraid of the criminal law; he is not afraid of the civil courts upon the question of damages; he fears only the injunction and the restraint which it imposes upon him. Relieve him of that restraint and you will create in his mind a belief that he has a right to do those things.

Now, another fact. This law would be injurious to the establishment in the States, because it would increase the number of strikes which are in operation. Your statistics will prove that, beginning with the year of 1881, there were four hundred and eighty-odd strikes in operation. In the year 1900 there were in the neighborhood of fifteen hundred strikes in operation. During that decade our industries became greater in number and our population proportionately increased. The reason why strikes are not becoming more numerous day and are not called for infinitesimally small matters, is because these men know that if they violate the law and injure property the injunction will restrain them from continuing the violation of it. We all know that success breeds success, and as sure as the labor organization is successful this year in demanding \$5 a day, just so sure

next year will demands be made for advance, independent of what the manufacturer himself is able to pay.

They look not into economical conditions justifying their demands, but blindly follow the dictates of their leader. So that we may expect, if the right of injunction is to be stripped from us, a multiplication of strikes will result, accompanied by acts of violence and harm greater and of longer continuance than the history of labor controversies has yet known.

I do not desire, gentlemen, to enter into the economic features of this discussion to any large extent, and I do not think that it is quite competent to the discussion of the matter really at issue as to whether the employer is making greater money or employee less money than he was some years before this time. But I am constrained, for the purpose of this record, and in answer to the doleful wail of the labor chief, to state that in so far as the workingman's condition in this country to-day is concerned, there is no country under the sun in which he is allowed more privileges and reaches more luxuries than in this country. We know, too, gentlemen, that strikes for the cause of wage and hours are becoming less and less in number, because the employees themselves are satisfied with conditions. An instance in point is the typographical union strike in Detroit, determined recently by the courts of our State. You will find the testimony that it was with tears in their eyes that men left the employ of the concerns for which they had been working. They did it because they had to do it and dared not do violence to the dictate of labor bosses.

In the city of Philadelphia to-day in a cause commenced no longer than four months ago the employees themselves went to their employers, under affidavits which are on file there, and protested that they did not desire to quit, but that they had to quit, because if they did not they would be blacklisted by the union and therefore unable to obtain work elsewhere; that refusal to strike meant estrangement from their friends and ostracism in the community where they had hitherto spent their lives.

I say that wages and hours are becoming less and less the question. The open or closed shop alone is ultimately the issue upon which the contending forces struggle. The labor unions declare they will work for no industry which refuses to obey their dictates as to who shall be employed; they demand that obnoxious shop rules be inaugurated, which restrict apprentices and limit the product; they lay down arbitrary laws as to what amount a man shall produce—place a premium upon lack of skill and insist that employers shall subscribe to their regulations to a point which means for unions a monopoly of labor and for employers ultimate ruin. Labor unions enlist not more than 7 per cent, according to statistics by the Department of Commerce and Labor of the United States, of those engaged in gainful occupations in the United States. Yet for their limited number they have the insolence to demand that protection be withdrawn from the employer and independent workman alike and that acts of lawlessness be privileged.

There is one point which I wish to emphasize in concluding, and only one. The various labor organizations, as represented by Mr. Gompers and Mr. Fuller, stated that they disagree upon the bills presented. The American Federation of Labor insists upon the utter

abolition of the writ of injunction in labor disputes, while Mr. Fuller, of the Brotherhood of Locomotive Engineers, deems such a policy unwise, and requests that the bill directing that notice be served upon all parties defendant before even a restraining order should be granted be adopted. To this latter proposition Mr. Gompers has added his emphatic protest. Encouraged, no doubt, by disagreement between the forces proposing these measures, the gentlemen immediately preceding me have rested upon this disagreement as supplying sufficient reason why the latter measure should fail. I do not know whether the members of the committee share this sentiment, but whether they do or not, I desire to say for the purpose of this record that in order to render injunction process effective it is necessary that an injunction issue immediately upon presentation of proper facts in proper form to the courts.

In the case of *Agler v. United States*, reported in 62 United States, you will find that the temporary writ was applied for on the 10th of November and not issued until the 27th of the following March—four months and seventeen days. Notice, if it signifies anything, means that a labor organization against which complaint is filed should have an opportunity to defend under it. If this procedure were established as essential, the virtue of the writ would be destroyed. First, you will find it impossible to get service; the ringleaders of to-day will leave to-morrow, and their place is supplied by others associated with them. Second, after service is obtained and a temporary restraining order issued, accompanied by an order for hearing, and the ordinary methods pursued, continuances will be applied for. Third, a reference may be had to a master or examiner upon demand of the other parties, which, if granted, involve days and even weeks of investigation before definite conclusions may be reached. Let not this burden be placed upon the employer who suffers, nor upon the independent workman who seeks to earn his livelihood unhampered by tyrannical union regulations. No injunction in this character of litigation restrains a man from doing those things which the law gives him the right to do. It commands only that acts in themselves lawless shall not be done; it stays the sweep of destruction and carries with it protection to life and limb. If notice is made necessary its functions are lost.

These are some of the considerations which move us to fervor in presenting this protest. We feel that the acts proposed are revolutionary in their tendencies; that they will breed offense, invite riot, and lead men to commit, in the name of labor, greater offenses than ever before. Above and beyond all, it will not only deprive the independent employee, who numbers a larger proportion of citizenship than affiliated unionism, of the protection to his life and liberty now given by law, but it spells the ruination ultimately of the business interests of this country.

Mr. PEARRE. I understand you are opposed to both bills?

Mr. MONAGHAN. I am opposed to both bills; yes, sir.

Mr. FULLER (Brotherhood of Locomotive Engineers). I wanted to ask Mr. Monaghan if, in his opinion, Congress could say to the courts which it has established that they should not issue a restraining order without notice.

Mr. MONAGHAN. Opinion upon that subject differs. The distinction made is whether such regulation interferes with the inherent

right of Federal courts or is merely a matter of procedure. If the former, Congress has no right to prescribe the issuance of notice; if the latter, Congress has the right. Independent of this question, however, under either condition, the passage of the proposed measure would involve the establishment of a policy radically unjust.

Mr. FULLER. I only wanted your opinion.

Mr. MONAGHAN. I have given it.

**STATEMENT OF MR. O. M. BROCKETT, OF DES MOINES, IOWA,
BEFORE THE HOUSE JUDICIARY COMMITTEE.**

Mr. BROCKETT. Mr. Chairman and gentlemen of the committee, I am here to protest against the favorable report of this committee upon what are known as the "anti-injunction bills" at the instance of the Business Men's Association of Des Moines, Iowa, and of the Manufacturer's Association of the State of Iowa. The nature of these associations has already been sufficiently explained. As yet they have no methods, and it is not their purpose to resort to any means to coerce the employers of the country to unite with them or to in any wise cooperate with them in the execution of their purposes. Whether in the evolution of the labor problem they shall be driven to imitate the methods of labor organizations in so far as they may be identified with the side of the employer or of the public in such controversies perhaps depends much upon the future practices of the unions, but I am disposed to believe that it depends even more upon the attitude and policies of the Government respecting the questions involved.

Before proceeding to what I have had in mind to say to you on the general subject under consideration I desire to refer to a subject touched upon by Mr. Tenney, of Chicago, in concluding his argument and in answer to a question by Mr. Gillette, and that is the subject of the power of the courts to do what is inaccurately expressed as enjoining crime. The question is asked whether or not the punishment of crime is not an adequate remedy, and it was suggested that a negative answer involved confession that such inadequacy must result from failure to enforce the penal laws and not from the fact that such laws do not afford adequate remedy. This is a fundamental misapprehension. The punishment of an offense against the public must not be confused with a redress of a private grievance. They have no relation to each other whatever.

The civil courts in proceeding to award redress take no note of the question as to whether or not the acts complained of constitute a crime against the public, and this irrespective of the question as to whether or not the remedy sought may be an action at law for damages or an appeal to the chancery court for equity relief or protection. Take the case cited by Mr. Gillette, a conspiracy to commit arson. If the purpose of the conspiracy were executed, no one would ever think of the fact that the perpetrators had been or might be punished for the crime as a reason why the owner of the property destroyed should not have compensation. In like manner, if before the conspiracy is executed the courts were applied to to prevent it, no thought should be taken of the fact that the crime, if committed, may be punished. The fact that such crimes are committed notwith-

standing the laws providing for their punishment demonstrates that they are not an adequate remedy.

Suppose that when some of the Territories now seeking admission into the Union as States shall be admitted and organized as such and shall, as many, if not, indeed, most of the States have done, enact a criminal code and repeal all common-law crimes, and suppose that in doing so by an oversight no statute is provided for the punishment of such a conspiracy as Mr. Gillette assumed in his hypothetical question. In that case, of course, there would be no remedy whatever without injunction except the common-law right to recover for damages after being inflicted. This idea might be followed out as to all torts which result in or threaten damages. The argument of the other side of the proposition would lead to the ridiculous result that just as fast as the legislative policy of the State might find it expedient to denounce these torts as offenses against the public, remedy for the private wrong would be lost to the person injured.

The discussion reminds me of that question which was rife and spirited some years ago with reference to the allowance of punitive damages in actions for tort, which were also subject to punishment as crimes. It was very strenuously contended, as you, being lawyers, will all remember, that the allowance of punitive damages subjected the defendant to double punishment. There was much plausibility in this argument, and there are no doubt many lawyers and courts now who think that it was sound in principle. But all of us know that the rule has been finally generally settled beyond the possibility of a general revival of the dispute, that, notwithstanding a fine or punishment that may be imposed for the same act, exemplary damages may also be allowed in the civil action for the same wrong. This illustrates how thoroughly the courts have committed themselves to the doctrine that in actions for a redress of private wrongs no notice whatever will be taken of any wrong against the public which may be involved in the same controversy.

Turning now to the general subject, I wish to observe that familiarity of surroundings is conducive to clearness of reasoning, and, as I must confess, what, indeed, must be already apparent, that I find myself in exceedingly unfamiliar environment, I am sure, Mr. Chairman, that your committee will allow me to resort to a little device which may aid me in part to forget that I am away from home. I shall make believe that I am appearing in a cause in court. The matter in hand is a bill in equity presented at the bar of the House by certain persons claiming to represent a certain class of our citizens seeking to enjoin the courts from enjoining the complainants in the execution of their pleasure in labor disputes. The averment stated as a cause of action is that the defendants to the bill—the courts—in issuing injunctions and restraining orders have, and will continue to, abuse their powers and oppress the complainants. My associates and I appear for the defendants.

Speaking for myself personally and begging leave to make a personal reference, I wish to say that in my twenty-five years of general practice at the bar I have had no specialty, such as sometimes is supposed to develop a bias in the mind when considering the justice of such controversies as the instant case. I have never been counsel for a railroad company or for any great corporation. My clients, friends, and associates, both in and out of my practice, have,

in general, been what is meant by the term "common people," and the feeling and interest that I have in the present case is, if I am able to understand myself, more that of a citizen of the country than that which might be supposed to move the representative of a special interest. I believe, gentlemen, that I am without prejudice and that I have as much real sympathy for the struggling poor everywhere as those who make it the business or profession of their lives to go about expressing such sympathy.

Turning now to the complaint under consideration, we observe that the bar of the House has referred to this committee as a referee to report findings of fact and conclusions of law. The defendants demur to the bill, gentlemen, on the grounds, first, that the court is without jurisdiction to grant the relief sought, and, second, because the facts stated do not entitle the complainants to the relief sought.

But this first proposition we subdivide as follows: First, that Congress is without power to grant the relief, because to attempt to do so would be the invasion of the province of one coordinate branch of the Government by another, and an attempt to interfere with the inherent powers of the courts. The other is that it would be class legislation of the sort which is inhibited by the Constitution and contrary to the genius and principles of our Government.

Before proceeding to examine these propositions, permit me to indulge in a general observation of your duty to consider the first of them. How much influence should the questionable constitutionality of the proposed act exert upon the consideration of the policy of its passage by a legislative body? The great care exercised by the framers of our Constitution to divide the legislative, executive, and judicial functions of the Government into three departments and to make each paramount within its own province, together with the history of abuses resulting from the exercise of two or more of such functions by the same branch of other and former governments, has led in our country to very great concern on the part of those clothed with the duty of discharging these several functions not to encroach upon the other. Hence we often find, in the opinions of the courts, language showing profound deference for the authority and power of the legislative and executive departments, and uniformly expressed reluctance to challenge their acts as transcending the bounds erected by the Constitution, except in instances which so clearly appear as to leave them no choice in the discharge of their duty.

It is equally the duty of the executive and legislative departments to maintain the same deferential respect toward the judicial department, and to constantly exercise the same concern not to invade its province or to unjustly provoke controversy as to whether or not they have done so. I have no doubt that your committee and the department of the Government with which you are connected, now, as in our past history, will always hesitate to take a step which necessitates serious consideration by the judiciary as to whether or not it exceeds your just limitations. If the legislative department should at every possible opportunity go just as far as the judicial department would tolerate, it would seem to require no great prescience of statesmanship to see that the barriers erected by the Constitution would soon become a mere fiction, instead of a restraining and vital force. It has often been pointed out that the danger to our institutions lies in the fact that encroachments are insidious, and that

their destruction, if not guarded against, is a growth and evolution, rather than any direct and open assault.

One of the old constitutional lawyers, whose name has escaped me and whose exact language I can not assume to quote, once expressed a thought something like this: That in troublous times, when the great sea of human life dashes itself against the barriers which have been erected to restrain it, we need the full strength of an unbroken Constitution. And I scarcely need to say that the cases to which the proposed bill will apply, almost without exception, will arise during troublous times.

At the hearing before your committee on the bill introduced at the last Congress Hon. James A. Beck, of New York City, and Hon. Levy Mayer, of Chicago, submitted most able discussions of the constitutionality of that bill, which might be examined with profit in connection with the one under discussion. Some of the points made and authorized cited by Mr. Mayer would appear especially apt. He makes the point that while the Federal courts issuing injunctions in the cases referred to have been created by act of Congress, that, notwithstanding, Congress did not create the judicial department of the Government. The language of the Constitution is that "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." Again, that "judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, * * * controversies * * * between citizens of different States," etc.

Thus it is seen that, while Congress was given power to create the courts, the power which such courts should have and exercise when thus brought into existence is defined and bestowed by the Constitution.

I shall not here take the time to quote the authorities cited by Mr. Mayer, but would refer the committee to his discussion and the authority cited by him, beginning on page 403 and continuing to the end of his statement, as published in the complete hearings before this committee at the last Congress. His proposition that the powers of the courts to grant relief by injunction is an inherent power with which the other departments of the Government can not interfere, I submit, is eminently sound and amply sustained by the authorities cited by him.

But if this were not so, there can be no question but that the power to issue restraining orders in all cases in which the power exists upon final hearings to grant a permanent injunction, and in all cases in which the exercise of the power is necessary to preserve the rights of the parties until they can have their day in court and an adjudication upon the merits of the controversy, is an inherent power. There are no courts of original general jurisdiction which do not assume to exercise such power, and I recall no instance in which its nature has been discussed by the courts or its exercise defended where it is not put upon the ground of necessity and declared to be an inherent power. A familiar instance is that class of cases in which appeals are taken where the determination of the appeal can not possibly afford a remedy for an erroneous judgment by the trial court unless the appellate court issues its restraining order to preserve the existing status until the determination of the appeal.

The power thus exercised is precisely of the same nature as that exercised by courts in contempt proceedings. They say, and say truly, that when the Constitution created their department of government it must have intended that it should be efficient, that it should do all of the incidental things which may be found to be necessary to discharge the judicial function. This power, precisely the same in its nature, is exercised by legislative bodies. They punish for contempt. They administer discipline to disorderly members and officers of their body, not because of any expressed authority, but because of necessity. The very power which brought them into effect must have intended that they should possess the energy and vitality to discharge their expressed functions.

I desire to say at this point that if I had had no other preparation for the discussion of the constitutional questions to which I address myself than that which could be made after being commissioned to appear here by the organizations I represent, I should certainly have desisted from the presumptuousness involved in doing so before a committee of lawyers, for I took the train for my journey here from my home in Des Moines within about an hour after receiving the notice. But within the past two years it so happened that causes were placed in my charge which were presented to the supreme court of Iowa which involved the question of the inherent powers of the courts as exercised in contempt proceedings, in proceedings to admit and disbar attorneys, as also the question of class legislation, and while I can recall the examination of many authorities at the time the research was made for these cases, which involved the application of the doctrine of the inherent powers of courts and their freedom from legislative interference, I am only able to give the references to a few of those which were cited in the briefs in the cases referred to.

One of the most exhaustive discussions on the subject of the inherent powers of courts as exercised in the admission to and the expulsion of attorneys from the bar I found in the case of *In re Day* (181 Ill., 73), and in an article referred to in that case, written by the leading attorney who prepared the brief in support of the inherent power of the court in such proceedings, published, as I now remember, in the Seventeenth *Harvard Law Review*. The case of *In re Branch* (57 Atlantic, 431) is also upon the same subject. An examination of these will show that it is clearly and strongly contended that the courts have the inherent power to control such matters, and that because the power is necessarily inherent the legislature can not meddle with it.

In the case of *Drady* against the District Court, an Iowa case published in 102 N. W. Rep., 156, this language is used:

Now, the district court is a constitutional court, and primarily it derives its authority to act from the provisions of the fundamental law of the State. That such courts have from time immemorial possessed the inherent power to punish for contempt is conceded.

In *ex rel Crow, Attorney-General v. Shepherd* (Mo.) (76 S. W. Rep., 79), the court said:

It is in the determination of what acts constitute such offenses (contempt) and the extent to which courts find it necessary to ascertain its existence and determine its necessary punishment that the courts exercise their inherent power. Any attempt, therefore, to declare what are such offenses or what the

courts may or shall do to ascertain their existence is clearly an invasion of the province of the judiciary. Clearly the legislature can not determine for the courts what are offenses against them alone or what they may do as an act of necessity to ascertain their existence. What is not necessary for them to do, in order to discharge the judicial function, they have no inherent power to do, and they can not justify the doing of such unnecessary things under the pretense of exercising the contempt power by pointing to legislative sanction.

And again, in the same opinion, this language is used:

And nowhere in the Constitution is the legislature given any power to meddle with the inherent powers of the courts.

In *Burke v. Territory (Okla.)* (77 Pac., 829), it is said:

The legislature has no power, in absence of constitutional provision, to recall or limit the inherent power of a court to punish for contempt.

In the *State against Doty* (32 N. J. Law, 403), it is said:

The authority is derived from necessity, and the authority ceases only when the necessity ceases.

In a letter to a member of the bar, quoted in 27 Howell, *State Trials*, 1019, Lord Erskine said:

Every court must have power to enforce its own processes and to vindicate contempts of its authority. Otherwise the laws would be despised, and this obvious necessity at once produces and limits the processes of attachment.

The case of *State v. Morrill* (16 Ark., 684) is unusually well reasoned and nearly always referred to in the later cases on the same subject. It sanctions the doctrine that the Executive can not exercise the pardoning power in favor of one imprisoned for contempt, because of its being an invasion of the province of the judiciary, and concerning the attempts of legislatures to interfere with the exercise of the power of courts in contempt proceedings, the opinion says:

The legislature may regulate the exercise of, but can not abridge, the express or necessarily implied powers granted to this court by the Constitution. If it could, it might encroach upon both the judicial and executive departments and draw to itself all the powers of the Government, and thereby destroy that admirable system of checks and balances to be found in the organic framework of both the Federal and State institutions and a favorite theory in the governments of the American people.

In a Georgia case (*Bradley v. Hill*, 50 L. R. A., 691) the court said:

The district court is a constitutional court, and the legislature has no right without express constitutional authority to abridge, restrict, or modify these powers.

Again:

The legislature has no more power to abridge, restrict, or modify the jurisdiction of a constitutional court to punish for contempt than it has to abridge their jurisdiction of actions conferred upon them exclusively by the Constitution, such as the trial of title to land, and the like.

A leading case on the subject is *Hale v. The State (Ohio)* (45 N. E., 199), in which the court used this language:

The difference between the jurisdiction of courts and their inherent powers is too important to be overlooked. In constitutional governments their jurisdiction is conferred by the provisions of the constitution and by statutes enacted in the exercise of legislative authority. That fact is not true with respect to such powers as are necessary to the orderly and efficient exercise of jurisdiction. Such powers from both their nature and their ancient exercise must be regarded as inherent. They do not depend upon express constitutional grant nor in any sense upon legislative will. The power to maintain order, secure attendance of

witnesses to the end that the rights of parties may be ascertained, and to enforce processes to the end that effect may be given to judgments must inhere in every court or the purpose of its creation fails. * * * If power distinguished from jurisdiction exists independent of legislation, it will continue to exist notwithstanding legislation.

I might greatly multiply authorities upon these propositions, but I apprehend that your committee would not care to have it argued with that degree of thoroughness that might be regarded as perfectly proper if the question were being presented for determination to a judicial tribunal. Of course most of the cases which I have examined apply the principle to cases arising in contempt and disbarment proceedings. For instance, some consider statutes enacted by legislatures requiring contempt proceedings to be tried by juries. An Illinois case involved a statute which declared that disobedience of a notary's subpoena to take a deposition in a cause pending in a foreign jurisdiction, or the unjustifiable refusal to answer questions upon the examination, should be deemed to be a contempt of the circuit court of Illinois and punishable as such.

Others consider statutes which sought to restrict the powers of the courts in contempt proceedings in various ways, some of them undertaking to declare what acts shall and what shall not be regarded as contempts. In all such instances the courts have without exception refused to be bound by such acts. There was at one time some difference of opinion and conflict of authority as to whether or not the executive could pardon persons imprisoned for contempt of court, and it will probably be recalled by members of this committee that when Governor Hill was governor of New York a heated and prolonged discussion resulted from his interference with the action of the courts in contempt proceedings, instituted for the punishment of parties charged to have participated in fraudulent practices in the State election. It resulted in a protest all over the country as an unwarranted interference by the governor with the action of the courts, which makes a distinct chapter in the political history of the country.

In another case, which I can not now cite, an application was made by a person adjudged in contempt of a Federal court for relief from an order of imprisonment, both to the judge of the court and to the President. Several highly entertaining messages were exchanged between the Executive and the court, each seeking to await the taking of responsibility by the other, and the Attorney-General did, in that case, express the opinion that the President might exercise the pardoning power, but the problem was solved in some way—I do not now remember how—so that the precedent was not established.

I think in every instance in which courts have since judicially adverted to that case the opinion of the Attorney-General has been condemned.

As applied to the power exercised in contempt cases, there is some difference of opinion in the authorities as to the power of Congress to restrict the powers of the courts created by it. There is, I believe, an act of Congress now on the statute books which defines what shall constitute contempts of the Federal district and circuit courts, and I do not recall any instance in which those courts have exercised the power in defiance of the statute. Some have sustained such act on

he reasoning that the power which created the court could limit or restrict its jurisdiction and inherent powers.

This reasoning, however, overlooks the fact that while the Congress, in the exercise of the authority conferred by the Constitution, has created these courts, it has not created their powers, and those cases which recognize this distinction and concede no more power to Congress to interfere with their inherent powers than would be conceded to it to interfere with the inherent powers of the Supreme Court of the United States, because as to both, the judicial and inherent powers come from the Constitution and not from the legislative body, proceed, I submit, upon the correct principle, and I am quite well satisfied, from the examination I had occasion to make in my practice some two years ago, will be found to be sustained by the recent decisions and greater weight of authority.

It has been suggested in this hearing that the legislative department of the Government has heretofore assumed to prescribe the jurisdiction of courts and to regulate their practice, and that this has passed unchallenged; and this is probably true. So far as I am personally concerned, I do not doubt the power of Congress to create different judicial tribunals and to parcel out the judicial power to them in such way as it may deem expedient—that is to say, it may, in general, prescribe the jurisdiction that each of the courts created by it shall exercise.

But if we bear in mind the distinction made between jurisdiction and inherent powers pointed out in the extract I have quoted from the supreme court of Ohio in the case of Hale against the State, we will not find ourselves involved in any difficulty here. The courts will limit themselves to the trial of the causes prescribed in the act creating them and defining their jurisdiction, but in exercising their judicial power in those cases they will limit themselves in the exercise of such power only by the provisions of the Constitution, as it is that fundamental charter which creates and confers such power upon such judicial tribunals as Congress may have brought into existence.

Again, it should be borne in mind that it is possible for the legislative branch of the Government to do some unconstitutional things which the courts can not correct. For instance, there is no more solemn and binding obligation imposed upon Congress by the Constitution than the duty to create such courts as may be necessary to supplement the Supreme Court of the United States to the end that the complete judicial function of government may be performed, as is also the like duty to provide by appropriations and otherwise for the maintenance and efficient operation of such tribunals. Yet there exists no real power to coerce Congress to discharge these duties other than an oath of office and the power of public sentiment.

The second proposition as to the constitutionality of the act under consideration is that it is of that sort of class legislation which is inhibited by the Constitution. Upon this question I shall not cite any authorities, for I assume that the general statement of the principle is perfectly familiar to every member of this committee, and it probably would not serve our present purpose to cite illustrative cases. The language of the Constitution usually referred to as forbidding class legislation has never been construed to mean that laws might not be passed which would be applicable only to certain specified classes of persons. The correct doctrine recognized by all the

cases, however they may differ in the opinion of the courts as to the facts to which they may be applied, is that a law which creates a class of persons or cases to which its provisions will alone apply must find some natural and just basis for such classification. .

I shall refrain from discussion here as to whether this doctrine applies to the Federal Government. It is inconceivable to me that it should have been intended that there shall be reserved to it the power to pass unequal laws while denying it to the States. And if this, the chief principle, the real genius of our institutions, should ever be violated, certainly every patriotic citizen would demand as a justification thereof some grave necessity so manifest as to meet with common consent and accord with American notions of justice, a situation which the framers, at least, assumed could not possibly arise in the State governments.

Now we come to the application of this doctrine. Is it, therefore, natural, just, and right that parties to a cause "growing out of labor disputes" shall not be awarded restraining orders or temporary injunctions by the courts in the like instances and conditions in which they are awarded in favor of other litigants? Can it be said, for example, that by reason of the very nature of such controversies it is unnecessary to the protection of the rights of the parties that such power should be exercised? If so, I answer that the class of cases referred to by me, only a few of which I have cited, show that the judicial department of the Government, as such, has already expressly declared that it has no power to issue such writs except as an act of necessity.

And, as a matter of fact, we all know it to be true, as a rule, that in cases where injunction is sought for the protection of the property of employers or the persons of employees continuing in their service in opposition to striking employees, the immediate issuance, *ex parte*, of restraining orders, is necessary for the preservation of the rights of the complainants. But if proof were needed, you have but to refer to a statement made by Mr. Gompers, appearing on page 19 of the report of the hearing upon the so-called anti-injunction bill before this committee at the preceding Congress. He is there reported to have said:

And before the time expires when these writs are returnable for hearing, either one of two things has occurred. Either the strike is lost and injunctions are made permanent, or the strike is won or broken, and usually one of the conditions of such agreement and settlement between employer and employees is that the legal phase of the question shall be dropped.

Again, on page 20, he says:

Between the time of the issuance of the injunction and the time it is made returnable the strike is either lost or won.

Hence we have it by his own confession that the only advantage of these writs to those in whose interests they are issued is that which is secured before an application for an injunction could be heard.

Now, the bill approved by Mr. Fuller—the Gilbert bill—concedes that the power must be left to the courts to grant relief by injunction in labor disputes. We have Mr. Gompers's authority, however, for the proposition that no relief whatever can be obtained by such remedy, if that bill be adopted.

In the statement made by Mr. Job, published as part of the proceedings in which Mr. Gompers used the language quoted, he cites an instance which goes far to prove that it is at least partly true that

a great value of these writs, as a protection to life and property in labor disputes, depends upon their issuance without notice. On pages 94 and 95 he mentions the situation at Beloit. He says that the city had been prosperous, all workmen employed at good wages, and that acceptable conditions existed, until about 1902, when union leaders began to organize and attempt to unionize the employees of that city. Disturbances immediately followed, which became very acute, until it was appealed to on account of his experience in such matters in the city of Chicago, and as a former member of an official board of Labor at State for the adjustment of such difficulties, and at his instance an injunction was immediately issued. Then he says:

The unions immediately found that the men who wanted to work had protection, and that violations of the criminal law by individuals would not be tolerated when they got together in a crowd, and salvation was furnished the city.

Then he gives the statistics as to membership of the unions at the time the injunction was issued, the failure of the strike, and the actual dissolution of the unions in a very short time, the men going back to work, and the former conditions continuing to the present day. One of the most manifest and striking reasons for the necessity to give this power with the courts is that maintained by Mr. Mahoney, Omaha, viz, the impossibility of service of notice.

Now, it may be suggested that if it be true that the real benefit of these writs is secured before a hearing, that the issuance of them without notice is tantamount to awarding an adjudication to one party without the other having had his day in court. Of course, I think the statement made by Mr. Gompers is too broad, but it is in part true, and so far as true is so because of the very nature of the controversy, and not because the issuance of such writs without notice is any evasion of the doctrine that every man shall have his day in court, or because they in effect adjudicate anything. It grows out of the fact, as he says, that the controversy is usually settled out of court, before it can be done in court.

The desire of the employer and the nonunion workman is that the power shall be retained by the court in order that in negotiating such settlements there shall be freedom from coercion and duress as well as actual protection of person and property in the meantime. The complaint of the labor leaders and unions, as indicated by Mr. Gompers, is that the issuance of such restraining orders without notice brings about a failure of the strike before there can be any trial of the bill for injunction. It would seem, therefore, that the inference is that the failure of the unions to bring out the assent of the employers to their demands is due to the protection from coercion and duress which is afforded by the writ. They perhaps will not confess this, and yet there seems to be no escape from the inference.

In considering this phase of the discussion it should be borne in mind that the right of parties against whom restraining orders or temporary injunctions have been issued to immediately appear and move for their dissolution has always been recognized by the courts, and that the hearing of such motions has always been as speedy as is consistent with due regard to the rights of all the parties.

Again, it should be said in answer to the complaint made by Mr. Gompers in the statement quoted, that one of the principal reasons

why such a small percentage of such actions are ever prosecuted to final adjudication in the court is that it is almost universally true that there is no defense to them. If the facts stated in the bill are true, the complainants are almost without exception entitled to the relief demanded, or at least some substantial relief.

If it so happens that some person is made a party defendant to such a bill who has taken no part in the lawlessness complained of and does not intend to do so, he has no interest in the matter and is not harmed by any order or decree that may be entered except to the extent that he may be made liable for costs. Hence the fact adverted to, viz, that but a small percentage of such actions proceed to final judgment upon the merits, after a contested hearing, being accounted for upon the two grounds mentioned, first, that the subject-matter of the controversy as stated by Mr. Gompers is eliminated before necessity of such a judgment, and second, because of the fact I have just mentioned, that there is no defense, furnish, to my mind, one of the strongest reasons why the power should not be interfered with and the most conclusive evidence that it has not been abused.

I will conclude this branch of the subject with just one further observation, viz, that while the power to issue restraining orders is an inherent power, it might be contended, with some show of reason, that the power to issue either temporary or permanent injunctions is not. Therefore, acts passed by the legislature prescribing that notice of application for temporary injunction shall be given, and either fixing the time and character of such notice, or directing the court to do so, may be within the legislative province. But, in instances where that has been done it has never, to my knowledge, been construed to be an attempt to divest the courts of the power to issue restraining orders.

For instance, in my own State we have a statute which prescribes that applications for temporary injunctions shall be heard upon such notice thereof as the court may order, and yet both our nisi prius and supreme courts have to my personal knowledge for many years issued restraining orders on proper showing, without notice, pending the hearing of the applications for temporary injunctions or other proceedings, and I have never known the practice to be questioned. I think the member of your committee from my State, Judge Birdsall, will corroborate these statements with reference to the practice there, and I will add that there are cases which discuss the difference between the nature of restraining orders and temporary injunctions, and that so far as they have come under notice, they all agree that there is an essential difference. Perhaps this may be an explanation for the language of the Gilbert bill, which seeks to divest the courts of the power to make such orders as well as to issue temporary injunctions.

Having established, as I believe I have, the fact, which it seems to me that everyone with knowledge of actual conditions in labor troubles knows without other proof that in the cases growing out of labor disputes, as in other cases, the necessity for the exercise of the inherent power to issue restraining orders exists, we must then look to some other ground which can be cited to sustain the proposed class legislation as being natural and just.

Can it be said, either from past experience or present prospects as to the future, that the power has been or will be abused more in this class of cases than in others in which the remedies may be sought?

Upon this question it might be both interesting and profitable if we had before us a list of the other cases in which the courts have exercised the same power. I have not had the opportunity for research as to these. Members of this committee will doubtless recall from their own experience instances in which the same power has been exercised in very dissimilar cases. I am unable to think of any in which it has ever been done, or to imagine any in which it is possible that the power may be exercised in the future, where it is less likely to be abused than in those cases where its exercise has given rise to the introduction of this bill.

We know from the nature of things that employees who have abandoned their employment and terminated the same have no property or other valuable rights which are at all likely to be infringed by these judicial orders. They have some peculiar economic notions, for the existence of which their leaders have assumed very great responsibility. But the rest of the public know that these eccentric ideas as to their rights are wholly inconsistent with the rights of the independent workman and the employer.

I submit that the real grounds of the grievance of the unions and leaders is that the restraining order interrupts the device of picketing as a weapon in the prosecution of their controversies with employers and nonunion workmen, and that they are unable to point to a single instance of substantial violation of even what they themselves claim to be their rights, aside from picketing and boycotting, the latter being a form of lawlessness that I believe is now generally conceded by all persons familiar with the subject to be such. Concerning picketing, Judge McPherson, of Iowa, said, in the case of *Union Pacific Railroad Company v. Ruef* (120 Fed. Rep., 121):

This picketing has been condemned by every court having the matter under consideration. It is a pretense for persuasion, but is intended for intimidation.

And in the case of *Atchison, Topeka and Santa Fe Railroad Company v. McGee* (139 Fed. Rep., 582), he used this language:

There is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity or peaceful mobbing or lawful lynching. When men want to converse or persuade they do not organize a picket line. When they only want to see who is at work, they go to see and then leave and disturb no one.

The appellate court of Illinois, in a case which I am not now able to cite, paraphrases and amplifies this language, as follows:

The picket system once established, intimidation, assault, slugging, and bloodshed follow as naturally and inevitably as night follows day. There can be no such thing as peaceful, polite, and gentlemanly picketing any more than there can be chaste, polite, and gentlemanly vulgarity or peaceful mobbing or lawful lynching. It is idle to talk of picketing for lawful and persuasive purposes. Men do not form picket lines for the purpose of conversation and lawful persuasion. Such picketing as is established by the evidence in the case at bar is intended to annoy and intimidate, whether physical violence is resorted to or not, and is not lawful in either case. Courts should be practical. When they form an opinion from evidence it must be a practical one. They should touch earth at every step. They have no license for stargazing or for indulging in poetic fancy. In imagination and in theory a peaceful picket line may be possible, but in fact a picket line is never peaceful. It is always a form of mutual warfare and quite inconsistent with everything not relating to force and violence; it is a form of unlawful coercion.

What reason can the gentleman assign; what can members of Congress who vote for such a bill bring forward to the judiciary to justify denying to them the power, upon the presentation of a bill properly verified and supported by affidavits, showing the existence of this "form of unlawful coercion," to issue a restraining order that it shall cease and be restrained pending the hearing upon application for a temporary injunction or the final trying of the bill? How can it be contended upon the one hand that such order will not protect substantial and fundamental rights or, upon the other, that it is at all likely to violate any such rights?

The circumstance has been adverted to here that disappointment was expressed by Senator Hoar and others that the provisions of the Sherman antitrust act should ever have been construed to apply to combinations of labor organizations. These persons are credited with the statement that no one connected with the passage of that act ever thought of such a result of its operation.

Who is there here to promise that history will not again repeat itself if the anti-injunction bills should become the law?

I am able to bear witness from personal knowledge, gentlemen, that employers' organizations, like those of their employees, have their radicals. I have heard them earnestly urge the necessity of making their organizations the exact counterpart of the unions, and vehemently contend, with perfect sincerity, that a condition of necessity exists creating the right above the law to protect themselves, their property, and their servants by precisely the same tactics which the unions resort to to enforce their so-called rights. In its last analysis this is, of course, the argument always resorted to by those who attempt to justify lynch law, or the so-called taking of the law into their own hands. Employers are few in numbers compared to the total number of their workmen. Combination and concert of action is much more practicable and liable to become much more effective among them.

They can easily congregate on short notice from all sections of the country to mature plans for mutual support or common warfare. They can have the benefit of the experience of labor organizations, and can readily adapt their methods and machinery to their own uses. Indeed it is fair to presume they can and will improve upon their ingenuity. If such a condition shall ever arise, it will be due mainly to the loss of faith in the efficiency of the Government. And in that event, their position will have this advantage of that over workmen, that whereas the rebellion of the latter against the law is due to their refusal to accept its edict as to what are their rights, that of the former will be due to the failure of Government to protect them in the enjoyment of what it declares to be their rights.

But in such conflict both parties would be in the wrong, and I humbly submit that intelligent and efficient government can do nothing less than remain in position to restrain both. And it would be less strange than many things that have happened to find within the next decade that its power and duty to do so will be oftener involved by those who now seek to destroy the power than by any other class of persons.

I have concluded, gentlemen, what I have had in mind to say upon the demurrer to the complainant's bill. Assuming that you will take

the demurrer under advisement and proceed to consider the evidence subject to the ruling on the demurrer, I invite attention briefly to that subject.

Mr. Gompers, at the hearing before this committee at the preceding Congress, produced a considerable number of injunction writs and orders which had been issued by the courts. It is possible that some of them are too broad to be defended upon strictly legal grounds. I think one instance was cited in which the appellate court struck out a clause which prohibited some act which that court held to be the exercise of a legal right and could not be prohibited. But what a poor and pitiable showing this all makes compared with that which is made by the history of the conduct of the interests supporting this bill, either in violation of such orders or before such orders were actually issued. And this suggests a contrast of the records of the alleged wrongs inflicted by the judiciary of this country in abusing the power under consideration and the record of wrongs inflicted by those who are now arraigning these tribunals.

It is fair, legitimate, aye, it is necessary argument in the consideration of this question to determine whether or not greater wrongs will result from the retention of this power in the courts or whether more injury will result from paralyzing their power to the extent sought by these bills. Suppose that the record were exactly the reverse of what it is. These gentlemen could point to the catalogue of crimes as well as lesser violations of human rights which are now charged to those who have violated such writs or orders, or committed them before they could be served, as the record of wrongs committed by the judiciary of our country in the exercise of their inherent powers, and, on the other hand, the judiciary could cite nothing in extenuation except such wrongs committed by organized labor as these leaders have been able to point out as having been committed by the judiciary, how very different the case would be.

What a contrast such transposition of parties and records makes. And when we think of the wrongs that have been righted, the faithful and patriotic service that has been rendered by our upright judiciary, on the one hand, and the damage and wrongs that have been inflicted by rioting or lawless workmen and their sympathizers on the other, what a spectacle would be presented by the national Congress of the country joining them in their condemnation of the courts.

We are now considering a question of fact: Does the evidence sustain the averments of the complaint that the courts have abused their inherent powers and oppressed complainants in the matter of these orders?

I have pointed out that this is controverted by the defendants, the courts. Not only is issue joined upon that question, but such is the testimony of every court which ever issued a restraining order, for the very issuance thereof is the solemn testimony of the court under demurrer that such being true their evidence is conclusive upon the courts in the fulfillment of its oath of office to issue the same, and I meant to have suggested in support of the second ground of the demurrer that such being true their evidence is conclusive upon this tribunal, and that therefore the complaint does not state a cause of action. But assuming the law may be found against the defendants as applied to the demurrer, I am now respectfully submitting to

you to find as a fact whether or not it is true that the courts have abused their powers and have been and will continue to be guilty of oppressing the complainants.

And here it is proper for you to consider the credibility of the parties as witnesses. We have been wont to speak of the defendants as honorable—the honorable courts. Is it true that these tribunals have been recreant to their trust and unworthy of this appellation? Is it true that they have forfeited the respect in which they have been held in the past history of the country, and that this tribunal will now solemnly find and record such fact? It is proper to suggest that the evidence of the complainants is discredited. In view of the crimes that may have attended the assertion by them of their so-called rights and their responsibility for conditions provoking the alleged oppression by the courts, that they are here now demanding a law to prevent their punishment, and in view of the fact that charges made upon this hearing that they have generally supplied funds to provide for the expense of the defense of the criminals, that they have not expelled them from membership in their organization, or in anywise sought to forego any advantage that might result from such crimes to their side of their controversy, have passed unchallenged, it would seem a just observation that these things are all inconsistent with the possession of good reputation for general moral character and truth and veracity among people to whom they are known.

In the hearing before this committee on anti-injunction bills under consideration at the last Congress it was suggested by some member of the committee somewhere in the report, as I remember, that bills upon the same subject have been introduced regularly at several preceding Congresses, and that up to that time no protest had been made to the committee against their adoption. This subject was commented upon, and, as I remember, General Grosvenor appeared at that session and addressed the committee in support of his bill, which I understand to be substantially identical with one now before your committee.

In that address he commented upon the appearance of numerous persons to protest against the bills. He characterized such persons as lobbyists and their protests against the bill as hysterical. I think this circumstance is worthy of the very serious consideration of this committee. It signifies something. I have my opinion as to its significance, and I desire to say that the circumstance, as I view it, does not imply any threat such as I understood Mr. Gompers to make in concluding his statement, but it does imply an aroused public sentiment upon the question of labor disturbances and the disposition which seems to manifest itself in some official quarters to play a game of politics with this question.

The people who are responsible for the presence of men who have appeared here in opposition to these bills are honestly and patriotically seeking to contribute to the solution of the labor problem and to the promotion of peaceful and prosperous industrial conditions. They do not believe that temporizing with crime or the withdrawal of any of the means for its prevention will contribute to these ends. On the contrary, they believe that additional remedies should be provided, and the present positions strengthened if possible. There is no excuse for the ignorance of any person as to the rights of labor, organized or unorganized, in this country, and, hence, no danger that writs violating such rights will be issued. Any man with ordi-

nary intelligence can, if he honestly wishes, know what they are. The courts have repeatedly laid down the rules in the plainest terms.

The Anthracite Coal Strike Commission, wisely recognizing that it was in position to remove all possible excuse for debate on the subject, again stated these rules. The trouble with the people who want this legislation is that they do not accept such doctrine as to what their rights are. And it is not because the courts deprive them of any of these rights that they are here with this complaint, but it is because they are determined, desperately determined, to secure what these plainly stated rules deny to them as their rights. And it is my humble judgment that if the verdict of this tribunal and of the Congress of the United States on the issue joined between them and the courts should result in any encouragement to them in the prosecution of this desperate purpose, succeeding Congresses will be besieged by the representatives of employers and citizens' associations in demonstrations against it which the present one may not now seem to the uninformed to forebode.

In conclusion, gentlemen, I respectfully submit that there is no excuse whatever for any intelligent and patriotic citizen to take sides against the courts in this controversy, much less is any justification to be found in the premises for any statesman to do so.

"With malice toward none, with charity for all, with a firm faith in the right as God gives us to see the right," we, the defenders of the courts, assume to speak for the law-abiding, for those who believe in American institutions, including the courts. We come to you not with a threat of revenge, but a promise of hope. We entreat you to trust the people, to trust their intelligence, their sense of justice, their loyalty to their public servants who espouse the right. And we promise for them, for the American people, that they shall prove still worthy of the confidence reposed by the great Lincoln when he said that he was willing to trust all the intelligence of the country to take care of all the ignorance of the country, and all the virtue of the country to take care of all the vice of the country.

**STATEMENT OF MAJ. ALBRIN P. PEASE, SECRETARY OF THE
EMPLOYERS' ASSOCIATION OF BOSTON, MASS.**

Mr. PEASE. Mr. Chairman and gentlemen of the committee, I appear before you to represent the Employers' Association of Boston. This association is composed of thousands of business men engaged in manufactures, merchandising, transportation (embracing all the various industries in these lines), as well as a great many other citizens who are interested in industrial peace by virtue of their patriotism and American citizenship. Millions of capital invested in greater Boston, a community of more than a million souls, is also represented in the business of its membership.

They desire to express their most emphatic protest against the bills which are before this honorable committee, which, if they become law, would prohibit the courts from granting a restraining order or temporary injunction at any and all times, whenever the pickets of organized labor are surrounding their factories and other places of business, attempting to intimidate and drive away not only members of labor organizations who do not desire to leave the employment in which they have been engaged upon terms satisfactory to themselves

individually and to their employers, but other persons not members of labor unions who are desirous of obtaining employment upon terms satisfactory to themselves.

They know from practical experience covering a long term of years that there is no such thing as "peaceful picketing," and the Standard Dictionary defines picketing to be, "A committee of men sent out to annoy nonunion workmen, especially during a strike." It denotes a state of war.

The courts are the conservators of peace, and only with rare exceptions have been misled by false statements as to facts when applications for restraining orders have been applied for by citizens who have had occasion to ask for this protection. It is well known that if these bills now proposed to be enacted into law should be placed upon the statute books then riot and assault, with the accompanying bloodshed, would follow as surely as the sun shines.

It has occurred in the past in all parts of the country, as is witnessed by the disturbances in Colorado during the miners' strike of two years ago, the coal strikes of the last twenty-five years in Pennsylvania, and the teamsters' strike in Chicago, and lately the printers' strike in New York and elsewhere throughout the country.

There is now in Boston a strike against the wagon and carriage manufacturers, and while it is only a week old, the pickets have intimidated and driven away hundreds of peaceable citizens who have attempted to apply for work in these plants, and the building in which the office of the Employers' Association of Boston is situated has been picketed to such an extent that the police have had to be called upon to clear the street in order to allow citizens who desired to apply for work through the labor bureau of the association to gain access to our offices.

I have received through the mails anonymous communications threatening all kinds of dire results to any and all of the employers who have dared to assert their right to employ whom they please and to discharge those in their employ who are not satisfactory to them.

This state of affairs has come about in less than eight days after the strike had been declared. Does any reasonable person think that more serious results will not follow if the employers hold out and insist upon their rights and succeed even partially in filling the places of the strikers?

Now, if the courts could not be invoked to restrain these acts at once, what would follow? A teamsters' strike will occur in Boston on the 19th of March if the union carries out its ultimatum just issued to the employers, and the man who was the most prominent factor in the teamsters' strike in Chicago, and who is under indictment and awaiting trial in Chicago on various charges which helped incite to the murder of several nonunion teamsters, is now in Boston inciting the union to carry out his behests. I allude to Shea, the president of the International Brotherhood of Teamsters.

Straws show which way the wind blows, and it is in the air at Boston that there is to be a determined and desperate effort to regain the ground lost by the various unions who have failed in their efforts during the past few years to run the business of their employers instead of allowing it to be run by the men who have built up the business, thereby giving these same men the chance to earn a living for themselves and their families.

Therefore, the members of the Boston Employers' Association desire to impress it upon this committee, and particularly upon the honorable gentleman who represents the Commonwealth of Massachusetts upon the committee, that the environments which already surround the manufacturers of Massachusetts are so unsatisfactory that they are doing business at a very small percentage of profit and in many cases at a loss in order to keep their plants going, rather than to shut down, thereby throwing their workmen out of employment and bringing disaster upon the community in which they are situated, that should this proposed legislation be enacted and they have no immediate redress in an action by the courts to protect their property in time of strike riots, they would certainly have to go out of business rather than run the chance of having their property and business ruined by the conditions that would confront them.

We believe that "no self-constituted body of men has the right to usurp the power of arbitrarily dictating to others their course in following their trade, occupation, or business; and no organization has the right to limit the opportunity of a man to better his condition by honest labor or the right of the American youth to follow the trade of his choice."

Gentlemen, believing this, and that whenever any individual or organization or its representative attempts to take this right away from any citizen by declaring him to be a "scab," "rat," or by other foul epithets in order to intimidate him from pursuing that right, or failing to intimidate him by these epithets thugs and slugging crews are brought into requisition, as has been done everywhere when other means fail, we believe the rights we now have, to invoke the courts to restrain these individuals from acts of intimidation and violence—which are so frequent as to be almost universal—should not be taken away from us, but that the unbiased judgment of the equity courts should be our safeguard in the future as they have been in the past.

We ask no better guaranty for the safety of our interests than is vouchsafed in President Roosevelt's message to Congress two years ago, in which he said:

Whenever either corporation, labor union, or individual disregards the law or acts in spirit of arbitrary and tyrannous interference with the rights of others, whether corporations or individuals, then, where the Federal Government has jurisdiction it will see to it that the misconduct is stopped, paying not the slightest heed to the position or power of the corporation, the union, or the individual, but only to the one vital fact—that is, the question whether or not the conduct of the individual or aggregate of individuals is in accordance with the law of the land.

Every man must be guaranteed his liberty and his right to do as he likes with his property or his labor so long as he does not infringe the rights of others. No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.

We do, however, want the protection which the courts now give and which, if taken away, means the complete undoing to our industries whenever the so-called "walking delegate" sees fit to call the men of his particular union out on strike, and then immediately commences the overt acts that prevent other men from attempting to take the place of the strikers.

We believe that the gentlemen composing this committee, composed as it is of lawyers of long experience and national reputation, do not

need any legal argument from our association, as that has been fully covered by other gentlemen representing other parts of the country and other associations; but I am instructed by our executive committee to say to you that they do not expect anything but exact justice, and upon this they rely. They also desire me to say that they know no politics or partisanship upon questions brought before them for adjustment, and they represent no politics or partisanship here or elsewhere.

STATEMENT OF MR. CHARLES QUARLES, OF MILWAUKEE, WIS.

Mr. QUARLES. Mr. Chairman and gentlemen of the committee, the Little bill is vicious, first, because it is class legislation. It relieves from the operation of the injunction a combination to injure property and business only when the conspirators belong to a certain class and are engaged in conspiring for a particular purpose, viz, advantage in regard to labor conditions. (*Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540.)

A body of men may be enjoined from perpetrating threatened mischief to a given property and business; yet another body of men will be immune from restraint and may perpetrate the same mischief, provided the purpose of their conspiracy is to compel an employer to change his methods of business against his will.

Citizens generally are, and must be, subject to injunctive process to prevent injury to property; so-called "laboring men" alone are to be exempted.

This is what Mr. Gompers calls "absolute equality before the law."

Second. While the bill works rank injustice to the employer, it protects no right of the employee.

Mr. Gompers and the rest use loose language. They assume that injunctions have been issued prohibiting lawful acts. In all their arguments before the Judiciary Committee of the House at its former sessions they have failed to prove an instance where this occurred since the case of *Arthur v. Oakes* (63 Fed. Rep., 310).

That case is the law of the land just as much as a statute would be. And it distinctly holds that no injunction can go to prohibit combinations for the performance of lawful acts.

Before the workingmen are entitled to have this bill considered, they must point out a single mandate in any injunction which has been actually issued by any court since *Arthur v. Oakes*, which prohibits the doing of a lawful act. This they can not do.

Third. Mr. Gompers and his associates should point to some act which is forbidden by some one injunction, the performance of which act Mr. Gompers and his associates will say is within the right of the workingmen.

For instance, the injunction in *Christensen v. Kellogg Switchboard and Supply Company* commands the workingmen to refrain from obstructing or stopping the business of the plaintiff or obstructing its employees in the operation of its business.

Is it one of the lawful rights of a discharged employee to obstruct the business of his former employer?

It also enjoins them from trespassing upon the premises of the plaintiff. Is it one of the inalienable rights of a workingman to commit trespass?

It also enjoins them from using force or violence against the employees of the plaintiff. Let Mr. Gompers justify the use of force or violence. If not, he can not complain.

Also from congregating about the premises of the plaintiff for the purpose of intimidating its employees or officers or preventing them from discharging their duties to the plaintiff.

Also from driving away employees by intimidation or violence.

Also from interfering with the plaintiffs' business or molesting any persons employed by them or seeking employment.

Also from interfering with its employees in going to and from their work.

Also from going to the homes of the employees and threatening their wives and families.

If Mr. Gompers will justify any of the acts which are forbidden by this injunction, he has some standing in this discussion.

If not, he and his associates are in this position: They are asking a dispensation for workmen to enable them alone, of all citizens, to injure their former employer in his property and business by methods which no one of them dares to justify or condone.

Their plea is that they be relieved from the operation of the preventive writ in order that they may do evil. If they have no desire to perpetrate the injurious acts, their liberty of action is in no way restrained.

I have read carefully all of the arguments before this committee at the former session of the House, and, when generalities are passed, find nothing in the plea of the workman except that they alone may be free from interference in wrongdoing.

Loose language is not sufficient. When they give a specific instance, not from hearsay, but by production of a copy of the injunction, they will be entitled to be heard—not before this committee, but before the court granting the injunction.

The case of *Arthur v. Oakes* would cover that case just as much as a statute would.

Fourth. The whole argument of Mr. Gompers and his associates is that there is an adequate remedy at law.

What they mean is that there is an alleged remedy at law. That because a man committing mischief may be punished if he can be caught and identified the accomplishment of the destruction must be permitted, and that society and the employer who loses his property or whose business is destroyed are adequately protected by the criminal law.

This is absurd on its face and is preposterous if Mr. Gompers says truly that all that his people wish is absolute equality, since the writ of injunction is awarded in all other cases to prevent the mischief, although in all other cases there is the same remedy by civil or criminal action that exists here.

The difficulty is that actions for damages and the criminal law furnish no remedy whatever to the employer for the injury done and furnish no adequate remedy either to society or the employer.

Fifth. It strikes me that the bill is unconstitutional, not only because it is class legislation, but because by it Congress assumes jurisdiction over factories in the various States simply because they are engaged in trade or commerce between the several States. This is

flatly against the decision in *United States v. Knight Company* (156 U. S., 1).

Sixth. And generally the bill is destructive of the principle on which our Government is based—complete equality of rights. It classifies men according to status. Once concede that a laboring man may have legislation in his favor because of his status and you concede that he may be enslaved because of his status. Let Mr. Gompers and his associates consider this proposition.

**STATEMENT OF HENRY SPALDING, ESQ., REPRESENTING THE
TYPOTHETÆ OF PHILADELPHIA.**

Mr. SPALDING. Attention is called to the fact that the Gilbert bill follows the language of the existing equity rules in force in the United States courts. Rule 55 of the Supreme Court rules provides:

But special injunctions shall be grantable only upon due notice to the other party by the court in term or by a judge thereof in vacation after a hearing, which may be ex parte if the adverse party does not appear at the time and place ordered.

This rule is, of course, subject to the provision of the act of June 1, 1872, which provides in substance that an injunction may be granted before hearing if there appear to be danger of irreparable injury from delay and to the power of the court to modify the rule to meet the emergencies of particular cases.

By this rule the courts have recognized the wisdom of affording an adverse party the opportunity of being heard in opposition to a motion for a preliminary injunction. By allowing the chancellor the discretionary power of enjoining without such hearing in exceptional cases the courts have followed the true spirit of equitable jurisprudence. The adoption of the bill under consideration will add nothing new to our system of procedure, but will establish in one class of cases a fixed and unbending rule that no injunction shall issue until after notice and a hearing.

Considering the proposed legislation broadly, it may be asked why it is necessary to bind the Federal judiciary at all by such a rule of procedure. Do the judges stand in need of such restraint? Probably no body of judges in the civilized world is more learned, more able, or more conservative than the judges of our United States courts. Appointed by the President, they are free from the obligations of partisanship. Holding office for life, they are under bonds to no political masters. Concerned very largely with questions involving the personal liberty of the citizen, their fairness and impartiality never have been seriously questioned. Must such courts be hedged about by rules which proclaim a distrust in their ability to wisely exercise the ordinary powers of a chancellor? The answer to this must surely be that the adoption by Congress of rules which will hamper and limit the equity powers of the court should only be made where the courts have given evidence of a disposition to exercise their powers in a manner which clearly offends against our sense of justice. And to show this, it is not enough that it may be found that in isolated cases courts have enjoined without hearing, and have thereby caused hardship to particular defendants. As against the intolerable hardship which would result from delay in the issuance of injunctions,

such cases ought to have scant consideration. Only a general tendency on the part of the courts to deny the right of hearing where an immediate injunction is unnecessary ought to move the passage of such a law as is here proposed.

Considering the bill more in detail, it appears that this restraint is to be put upon the courts only "in cases involving or growing out of labor disputes." The question at once arises, What is there in the nature of labor disputes to differentiate them from all other causes of litigation? One would suppose that in such cases the necessity for the issuance of immediate injunctions would often be more pressing than in almost any other class of cases, for it is in these cases that the destruction of life and property most frequently occurs. But passing for the moment the question of whether any logical reason may be found for the distinction, it may be asked how any distinction whatever can be made based upon the character of the dispute out of which the litigation arises.

A labor dispute may be said to be a difference arising between an employer and an employee with regard to the employment. If the workmen of A inaugurate a strike, and gather about his place of business in numbers, preventing the carrying on of business, we would have a case involving a labor dispute, and an injunction could not issue except after notice and hearing. If, however, a number of persons having no labor dispute with A should, out of mere spite, gather about his place of business and do exactly the same acts as are done by A's workmen in the case above, we would not have a labor dispute and an injunction might issue immediately. Here are two cases which are exactly alike. It is quite immaterial that in one the acts done by the defendants are in consequence of a strike, and in the other out of pure malice.

Looking at the situation from the point of view of the complaining plaintiff, it is plain that it is no concern of his whether his business is ruined by one set of men or by another; he is entitled to the aid of the protecting arm of the chancellor as much in one case as in the other. And the chancellor would altogether disregard the underlying cause of the difficulty and would extend his aid as promptly in one case as in the other. For the court to say that relief is denied because the case arises out of a labor dispute would be rank injustice. For the lawmaking power to say that the measure of relief to a suitor who applies in a case involving a labor dispute must be less effective than that allowed in all other cases would be the grossest kind of class legislation. That is what this bill is. It is legislation the sole effect of which will be to allow a favored class of persons an opportunity to avoid the jurisdiction of a court of equity when that court is appealed to to prevent their destruction of life and property.

In conclusion I may refer to a thought suggested by the opinion of Mr. Justice Brewer in *In re Debs* (158 U. S., 564). The situation in that case is described in the following graphic language:

The picture drawn in it of the vast interests involved, not merely of the city of Chicago and the State of Illinois, but of all the States, and the general confusion into which the interstate commerce of the country was thrown; the forcible interference with that commerce; the attempted exercise by individuals of powers belonging only to government, and the threatened continuance of such invasions of public right presented a condition of affairs which

called for the fullest exercise of all the powers of the courts. If ever there was a special exigency, one which demanded that the court should do all that courts can do, it was disclosed by this bill, and we need not turn to the public history of the day, which only reaffirms with clearest emphasis all its allegations.

After stating that the Government might have resorted to force to correct this condition, the court said:

So, in the case before us, the right to use force does not exclude the right of appeal to the courts for a judicial determination and for the exercise of all their powers of prevention. Indeed, it is more to the praise than to the blame of the Government that, instead of determining for itself questions of right and wrong on the part of these petitioners and their associates, and enforcing that determination by the club of the policeman and the bayonet of the soldier, it submitted all those questions to the peaceful determination of judicial tribunals, and invoked their consideration and judgment as to the measure of its rights and powers and the correlative obligations of those against whom it made complaint.

If equity jurisdiction is to be curtailed, if the power of the chancellor is to be weakened rather than strengthened, it will certainly follow that appeals to the courts will become less frequent and governments as well as individuals will more and more be compelled to redress their injuries by the strong right arm.

WASHINGTON, D. C., March 15, 1906.

THE CHAIRMAN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE.

GENTLEMEN: In behalf of the Manufacturers' Association of the City of Bridgeport, Bridgeport, Conn., and at its request, I hereby protest against the passage of bills known as H. R. 4445 and H. R. 9328.

Respectfully, yours,

H. W. HAWLEY,

Secretary Manufacturers' Association of City of Bridgeport.

PROTEST PRESENTED AGAINST HOUSE BILL NO. 9328, BY CHARLES C. MONTGOMERY, SECRETARY OF THE BUSINESS MEN'S ASSOCIATION OF OMAHA AND SOUTH OMAHA, NEBR., ON BEHALF OF THE SUBSCRIBED ASSOCIATIONS.

THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES.

GENTLEMEN: On behalf of the associations which we represent, we respectfully desire to protest against the passage of the Gilbert Anti-Injunction bill, No. 9328, providing that in labor disputes no injunction nor temporary restraining order shall be issued without notice to the defendants, because—

1. There is no necessity for a law like the one proposed, for no one under the present law is deprived of any rights.

Under the present law the practice is to serve the writ on all the defendants who can be reached, and to do so as soon as possible in order that there be no question as to the knowledge of an offending defendant of the contents of the writ, the return of the officer being the best evidence that the defendant had knowledge thereof, and further because everyone served with the writ is less likely to offend against its provisions.

Those served stand in a representative capacity for all others similarly situated. If the writ is too broad or erroneous, they can at once appear and obtain its modification. In fact, any of the defendants named may come in and move for its modification.

Therefore there is no necessity of compelling service to be made upon all of the defendants, as the present remedy to the defendants adequately protects them, and their rights are not invaded.

2. The injunctive powers of the court are necessary for the protection of life, limb, and property, and should not be restricted or modified.

The history of recent years, especially in this community, has shown that it is very necessary to have injunctions issued to prevent acts morally wrong, and which have a tendency to become, and very often have become, criminal.

Under existing law the power to prevent damage or destruction to property as the outgrowth of labor disputes is not wholly adequate, and any restriction of this incomplete power would encourage lawlessness and thus lead to irreparable damage to life, property, and vested rights.

The proposed bill would materially restrict the powers of the courts, because it is impossible to obtain service upon all of a large body of strikers either before or after the granting of the writ. Under the existing laws generally all who can be served are served. It has been found impossible in many instances to reach a large portion of the defendants named, either because they could not be found or evaded service, and yet most of them had knowledge of the terms of the writ. No one has ever been convicted who did not have such knowledge.

Moreover, it is usually necessary to make parties defendant those who are acting in conspiracy and conjunction with the strikers. These parties could not be served because not known.

There can not be shown any abuse of powers by the Federal courts, and therefore there should not be placed any restrictions upon these powers, which are so essential to the peace and welfare of the community.

We therefore, as representatives of our various associations, protest against this legislation, because it will subserve the good of no one, will encourage lawlessness and crime, and will deprive the community and us as individuals of our right to the protection of our property and persons.

Respectfully submitted.

F. W. Judson, president Omaha Commercial Club; Frank Barrett, president Merchant Tailors' Exchange; Euclid Martin, president Business Men's Association of Omaha and South Omaha; Bert Murphy, secretary Master Horseshoers' Association, Local 33, Omaha, Nebr.; Samuel Rees, president Omaha Typothetæ; P. F. Petersen, president Western Master Bakers' Association; Ed. O. Hamilton, president Omaha Builders' Exchange; W. P. Deverell, president Brick Contractors' Association; James Cameron, secretary Master Plumbers' Association.

[Statement of H. L. Bond, jr., before the Committee on the Judiciary of the House of Representatives on the bill (H. R. 89) entitled "A bill to limit the meaning of the word 'conspiracy' and the use of 'restraining orders and injunctions' in certain cases." Thursday, February 25, 1904.]

STATEMENT OF H. L. BOND, JR., ESQ., REPRESENTING THE BALTIMORE AND OHIO RAILROAD COMPANY (610 CATHEDRAL STREET, BALTIMORE).

Mr. Chairman and gentlemen of the committee, there is danger, I fear, at this stage of the discussion in making any diversion, in that by so doing I may weaken the effect of the arguments that have been made; and yet I can not feel that I should go over the same ground that has been so ably covered by Mr. Beck and by the other gentlemen who have spoken.

The fact that I may diverge a little from the line of argument they have taken must not be understood as disagreement on my part with what they have said, because I wish at the outset to say that I concur fully in all the positions that were taken by Mr. Beck, and that I concur fully in the expression of Judge Blizzard as to the services that the Federal courts have rendered in these matters and the public necessity of the preservation of the law as it is to-day. But I thought I might add a little to the discussion before the committee by going back to the proposed bill and stating as briefly as possible the effect of that bill on the law as it is to-day, and particularly on the law as it affects the carriers of interstate commerce and their customers.

The law of conspiracy which this bill starts out by amending, the criminal law of conspiracy, has been definitely laid down and settled by the Supreme Court over and over again; but most completely and

lucidly, perhaps, in the case of *Pettibone v. United States* (148 U. S., pp. 197, 203). That was a case of indictment for conspiracy; it was an indictment under section 5440 of the Revised Statutes. The court in examining the sufficiency of the indictment had occasion to go into the law of conspiracy, the common law, and to state it. In doing so the Supreme Court used this language:

The courts of the United States have no jurisdiction over offenses not made punishable by the Constitution, laws, or treaties of the United States, but they resort to the common law for the definition of terms by which offenses are designated. A conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means, and the rule is accepted as laid down by Chief Justice Shaw in *Commonwealth v. Hunt* (4 Met., 111), that when the criminality of a conspiracy consists in an unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, that purpose must be fully and clearly stated in the indictment; while if the criminality of the offense consists in the agreement to accomplish a purpose not in itself criminal or unlawful, by criminal or unlawful means, the means must be set out. (*Pettibone v. United States*, 148 U. S., 197, 203.)

The same statement of the common law had been given in *Callan v. Wilson* (127 U. S., 540, 555), and a full citation of authorities is made by Justice Harlan in *Arthur v. Oakes* (63 Fed. Rep., 310).

Now, the definition of a conspiracy in H. R. 89 omits entirely from the definition of what shall be considered a criminal conspiracy—a conspiracy to accomplish an unlawful end not in itself criminal and a conspiracy to accomplish a lawful end by unlawful means not in themselves criminal. The effect of that is, of course, to leave out of the criminal law such cases as that of *Callan v. Wilson*, which was referred to by Mr. Davenport as occurring in the District of Columbia and which is reported in 127 U. S., 540, and to leave out all that vast number of criminal conspiracies which take infinite variety of forms and which are known to-day as criminal boycotts. It legalizes boycotting.

Mr. Beck called the attention of the committee to the very wide scope of the language in this first provision, in that it applied to any agreement, combination, or contract between two or more persons to do any act in contemplation or furtherance of any trade dispute between employees and employers in the District of Columbia or the Territories, and between employers and employees anywhere who may be engaged in trade or commerce between the several States, or in foreign commerce, or in commerce between the States and the Territories, or between the District of Columbia and the States, and so forth. He called attention to the fact that in so providing, so covering by a Federal statute, or attempting to cover by a Federal statute, the relations of employers and employees who were simply engaged in interstate trade, this bill went beyond anything that had ever been attempted by Congress; and in his opinion—in which I think he is sound—the attempt so to do is beyond the power of Congress.

I do not propose to repeat his argument on that proposition, but there are other peculiarities about this provision. The language is taken—is borrowed to a certain extent—from the first section of the English act of 1875; but the person who drafted this bill, out of an abundance of caution, inserted the words “or not to do or to procure not to be done.” and as the act stands there is nothing to punish any agreement, combination, or contract in furtherance of a trade dispute,

and so forth, not to do or to procure not to be done any act; because it is simply absurd to say that you are going to punish a man for not doing or procuring not to be done a criminal act. That is the duty of the police every day—not to do and procure not to be done a criminal act. A strict construction of this bill as it stands leaves, I say, the negative conspiracy—the conspiracy not to do or to procure not to be done absolutely without any criminal penalty.

That, I take it, was a mere oversight of a gentleman who wished to improve on an act of Parliament—a very difficult thing to do. But none the less, if this bill should pass it would become the law.

We had this question up in Maryland as long ago as 1884. In 1884 we had a labor campaign in Maryland, with a labor plank in the platform, and the theory was advanced that it might be the law of Maryland, as it had been decided to be the law of England, that any combination or conspiracy to increase wages was a criminal combination or conspiracy because in restraint of trade. That proposition, so far as I am aware, had never been decided in Maryland or in any State of the Union; but it had been decided in England, and that decision was the immediate moving cause of the passage of the act of Parliament of 1875.

So in 1884 the general assembly of Maryland passed an act which is to be found in the laws of Maryland to-day, codified as section 31 of article 27, public general laws. I wish to call your attention to this language, because it shows what in Maryland it was deemed necessary to protect by way of exception in order to prevent an act of this character from having the effect of destroying the common law of conspiracy, except in so far as that common law might hold that a combination to raise wages was a criminal conspiracy because in restraint of trade. The law is in this language:

An agreement or combination by two or more persons to do or to procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as an offense.

That is substantially section 1 of the English act of 1875.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or any offense against any person or against property.

Mr. LITTLEFIELD. Have you ever looked over the former hearing of this committee when Mr. Ralston appeared?

Mr. BOND. Yes, sir.

Mr. LITTLEFIELD. He quoted the Maryland statute in that hearing, if I remember right. Did he quote these qualifying sections?

Mr. BOND. He did.

Now, Congress, in passing this act, is acting in what I may call a dual capacity so far as the criminal law is concerned. It is the legislature of the District of Columbia and of the Territories for this purpose. Outside of that it has effect on interstate trade and commerce. One important effect of this act in the District of Columbia, for instance, is to destroy the crime of unlawful assembly, which is a crime that can not be committed by one person, for the same reason that a bird can not flock by himself. It also affects offenses against persons and offenses against property by the removal of restraints on conspiracies to do anything that is not in itself a distinct crime when done by one person; and even there, as to the not doing or the procuring not to be done, there is no criminal liability at all.

There are other conspiracies provided against in the Revised Statutes of the United States on which H. R. 89 would operate. I shall not go into them, but they are found in section 5406, conspiracy to intimidate party, witness, or juror; in section 5407, conspiracy to defeat enforcement of the laws; in section 5408, conspiracy to injure and intimidate citizens in the exercise of civil rights; in section 5518, conspiracy to prevent accepting or holding office under United States, etc.; in section 5519, conspiracy to deprive any person of the equal protection of the laws.

If we turn from those direct criminal provisions—to call them direct—to the statutes which affect particularly interstate commerce, we have the act of July 2, 1890 (the antitrust act), and the act of February 4, 1887 (the interstate commerce act). The effect of this bill on the antitrust act is, as stated by Mr. Beck, simply to destroy the effect of that act as to any such agreements, combinations, or contracts, because it says “nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce.”

What is the reference there of the word “such?”—because that is an important question in the construction of this bill. With great respect to the report of the majority at the last session of Congress I think—

Mr. LITTLEFIELD. I think it ought to be stated in reference to that report that it is very doubtful if more than two or three members of this committee, outside of the chairman, ever saw that report before it was presented. Of course, I filed the minority view. So you will appreciate the situation.

Mr. BOND. Yes, sir.

Mr. LITTLEFIELD. That is, I do not think the committee as a whole, or that any individual members outside of the chairman, ought to be held responsible for those views. They were drawn, as you know, by Mr. Ray, the chairman, and I do not know whether—I will not say that he did not submit them to any other member, but I have not seen any other member to whom they were submitted. I conferred with him myself while they were being drawn. So the other members of the committee are not necessarily chargeable with the conclusions stated in that report.

Mr. BOND. Unless attention was called to the point, it might be one which on a reading of the bill straight through would not occur to the person reading it. But that the word “such” refers to all the agreements, combinations, or contracts described, without any qualification as to an agreement or combination which would be punishable—I mean an agreement or combination to do an act which if committed by one person would be punishable as a crime—that the word “such” refers to the whole class of agreements, combinations, and contracts, and without any exception, I think, can not be disputed by anybody who makes a careful reading of the bill. So that, so far as the interstate-commerce clause goes, it takes those contracts out, no matter what their character. They are no longer under the antitrust act.

Where does that leave us with the interstate-commerce act? This bill provides that this language, the language of this bill, shall be read into any act under which anybody might be punished for the crime of conspiracy. The interstate-commerce act, in its tenth section, provides that any violation of the act by any carrier or, if such

carrier be a corporation, by any officer, agent, or employee of the carrier, shall be a misdemeanor punishable as therein provided.

This bill reads into that section the proviso that no agreement, combination, or contract by or between two or more persons, etc., in contemplation of a trade dispute shall be considered in restraint of trade or commerce. Is it not the necessary conclusion from the constitutional power exercised by Congress in passing the interstate-commerce act, that the object and purpose of that act was to prevent restraint on interstate commerce, and that these offenses, created by section 10, to wit, violations of the interstate-commerce act, were so created offenses because they were considered by Congress as in restraint of trade and commerce between the States; and if you add a proviso to that section that no such agreement as this shall be so considered, do you not exempt such agreement from the penalties of that act?

That becomes important. I think I can show the importance of that when I refer to some cases that have arisen. But, however that may be, when we come to the provisions of this bill as to civil remedies there can be no question.

Nor shall such agreement, combination, or contract be considered in restraint of trade or commerce.

That, I say, covers every agreement, combination, or contract mentioned in the first sentence. "Nor shall any restraining order or injunction be issued with relation thereto." "Thereto" can only refer to "such agreement, combination, or contract" mentioned in the next preceding line but one; so that as to the civil remedies there can not be a shadow of question that no matter how criminal the agreement, combination, or contract may be at common law or under any statute, no matter how much it may violate the antitrust act, no matter how much it may violate the interstate-commerce act, there can be no injunction or restraining order issued with relation thereto.

There have been in the past two great interstate boycotts attempted: The boycott of Ann Arbor cars in 1893 and the boycott of Pullman cars in 1894. The first was the boycott of the Toledo, Ann Arbor and North Michigan Railway by the Brotherhood of Locomotive Engineers. That was in 1893. The then constitution of the Brotherhood of Locomotive Engineers contained what was known as section 12, which in substance was a provision that when a strike had been declared in accordance with the rules of the order on any one railroad, no locomotive engineer employed on any other railroad connecting or adjacent to the railroad on which the strike was in effect should haul any cars of that first-mentioned railroad. There was a strike declared on the Ann Arbor railroad. Thereupon Chief Arthur and the other officers of the brotherhood served notice on the Lake Shore Railroad Company, and on the Pennsylvania Company, and on the other railroads in the central traffic territory which were either connecting or adjacent to the Ann Arbor road, that no locomotive engineer belonging to the brotherhood could haul any car of the Ann Arbor road, and requested that the companies notified should not force their engineers to violate this rule of the brotherhood.

Thereupon the Ann Arbor road went into the United States circuit court and obtained an injunction against the Pennsylvania Company, the Lake Shore Company, and all these other railroads, some twenty

of them, enjoining the violation by them of the interstate-commerce act by refusing to haul the cars of the Ann Arbor road, and thereby discriminating against that road. (Toledo, etc., Rwy. Co. v. Pennsylvania Co., Fed. Rep., 730.)

That injunction was issued in the usual form of an injunction against a corporation, against not only the corporation, but against all its officers, agents, and employees. It was in that case that the contempt occurred by Engineman Lennon, whose case was afterwards taken to the Supreme Court of the United States, and is reported in 166 United States, page 548.

Mr. LITTLEFIELD. Was the brotherhood joined in the proceedings?

Mr. BOND. Under the original bill only the railroad corporations were made parties. After the first injunction had been issued, served on the corporations, and published by posting at all the stations on the lines of the roads, an amendment rather to the original bill was filed, setting out this rule of the brotherhood (Chief Arthur was the head of the brotherhood then), and charging that this rule 12 constituted a conspiracy in violation of the interstate-commerce act, and that Mr. Arthur was the head of that conspiracy; asking that he be made a party and that an injunction be issued as against him. That was done. As a result, the orders which Mr. Arthur had issued he revoked and obeyed the court, as was to be expected in his case.

I cite that case as showing one of the most far-reaching interruptions of interstate commerce that has ever been attempted in this country. Next to the Debs strike it was the most formidable boycott. The Debs strike was an attempt to boycott the Pullman Company; and while in Illinois the United States filed the bill (In re Debs, 106 U. S., 564), in Ohio the conspiracy was enjoined substantially as in the Ann Arbor case (Thomas v. Cin., N. O. and T. P. Rwy. Co., 62 Fed. Rep., 803).

I think it is perfectly clear upon the face of this bill that if this proposed act had then been on the statute books it would have been impossible for the Ann Arbor road to obtain that injunction, certainly as against the employees of those other railroads or Chief Arthur, and probably as against the corporations defendant themselves; because under this act it would have been perfectly legal, notwithstanding the interstate-commerce law, for the Lake Shore road or the Pennsylvania Company to have said to their employees, "All right; we do not want any trouble with you; we do not care anything about the Ann Arbor road; let them fight their own battles; we won't take their freight."

Mr. PARKER. Would that agreement not to take their freight be legal? If they did not take their freight would it not be a discrimination?

Mr. BOND. But if this act is read into the interstate-commerce act it would be an agreement in contemplation of a trade dispute.

Mr. LITTLEFIELD. The last expression of the legislative will so far as consistent would undoubtedly control.

Mr. BOND. I think so. But, at any rate, no injunction could have issued against the employees or Chief Arthur, because the injunction would have had to relate to some agreement in a trade dispute.

Now, I am not here because of any apprehension that the employees of the railroads are going to attack the railroads. I am here because I believe that if this bill becomes a law there will be one duty

imposed on the railroads as common carriers and another duty, or, rather, a freedom from duty, left to their employees. And the result of that will be that despite themselves the railroad employees of this country will be dragged into these trade disputes between the commercial corporations, or the commercial business concerns and the employees of those commercial concerns. There is no boycott which will be so effectual to bring any manufacturing concern or any mining company to terms as the boycott of its interstate commerce.

You have the bill here drawn so that it applies to any trade dispute between any employer and his employees who are engaged in interstate trade or commerce. There is no concern of any consequence in this country that is not engaged in interstate trade or commerce. The very existence of the trade dispute is sufficient to enable those people, or anybody the representative of the interested union, to come and make an agreement with the railroad unions to boycott the traffic of that business concern.

And so far as any remedy by injunction goes, this bill absolutely takes it away from any shipper whose shipments are so boycotted, and, as I believe on a construction of this bill when read into the interstate-commerce act, it will take away all criminal liability.

The carrying of the boycott into interstate commerce is the most powerful weapon that you can put at the disposal of anybody who wants to injure the business of another. While I do not believe for a minute that the employees of the railroads of this country will wish to be dragged into these disputes, anybody who knows the sympathy that exists between those organizations will know how hard it will be for the railroad employees of the country to keep out, how hard it will be for them to refuse, if they are relieved from the duties which belong to the employment of interstate carriage. As the law stands to-day they are subject to the duties which are imposed on the railroad corporations; there are duties imposed not only on the corporation, but on the employees.

Even if it were not so as to the railroads, even if you should put in an exception in this bill, which does not exist there to-day, that it should not in any way affect the interstate-commerce act, you would still leave it open to others engaged in interstate carriage, any concern engaged in interstate carriage that was not a railroad concern (because the interstate-commerce act applies only to carriers by railroad or partly by railroad and partly by water) to make a boycott agreement against the traffic of any concern involved in a trade dispute and engaged in interstate trade. There are such concerns all over the country, supplemental to the transportation by railroad and the transportation by water.

There is one other point that I wish to call to the attention of the committee. It must have struck the members of the committee, as I think it has struck others who have considered this matter, that the promoters of this bill are laying great stress on conspiracy, the law of conspiracy, getting away from the law of conspiracy. They do not ask to have specific things authorized; they do not ask to be excepted from the antitrust act, which would be perfectly simple, but they ask to be exempt from the law of conspiracy, both from its criminal penalties and from the civil remedies—the only effectual civil remedy to meet a conspiracy against property, viz, the injunction.

On the one side the criminal remedy is the one that is useful and is

commonly sought to protect the individual in his personal rights, just as it was resorted to in the case of *Callan v. Wilson*, in the District of Columbia here. A man who has nothing but what his labor can command can not afford to go into a suit the difficulties of which have been stated to you here this morning by Mr. Davenport. He can not afford to employ counsel to travel all over the United States to get testimony. His remedy, his only protection, is by indictment for a criminal conspiracy. The State must furnish his protection if he is to have it. When you come to the large business enterprises, they can resort, and they have to resort for the protection of their property, to the remedy by injunction.

Why is it that these gentlemen wish to be exempt from the law of conspiracy, both as to its criminal penalties and as to its civil remedies? It is simply this: A man becomes a party to a criminal conspiracy, and he becomes liable for the act of every coconspirator in pursuance and in the carrying out of that conspiracy. The man who engages in a conspiracy which is illegal and which can be met by an injunction is subject to that injunction, although he may not himself personally be seen on the premises. If he aids and abets and counsels a violation of the law, he is liable to process. Therefore the labor leader can not sit back and concoct his plans and safely leave them to be carried out by the rank and file without danger of being either made criminally liable under an indictment or being served with the process of injunction, and, if he continues in the face of the injunction, being brought into court to answer for contempt.

The effect of their argument is: "Leave the leaders out and catch the rank and file who are sent into the points of danger, who are sent to do the specific acts." In *United States v. Britton* (108 U. S., 199) it was held, in an indictment for conspiracy, under section 544 of the Revised Statutes, that the conspiracy must be sufficiently charged and can not be aided by averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy. So if you legalize the conspiracy and exempt that from criminal prosecution the leader is absolutely safe and exempt from all danger of criminal prosecution, and the only man that can fall into the toils of the law is the man who is caught red-handed committing the crime.

Now, that, as I see it, is the real animus of this movement to obtain a limitation of the law of conspiracy and an exemption from the remedies against it. Should the leaders be freed from the restraint imposed by the law as it is?

Mr. Gompers stated in his argument the other day that he had known strikes to be destroyed or ended by these injunctions—known to be lost, I think he said, by these injunctions.

Well, that, if it is true, proves two things: First, that those strikers must have relied on unlawful means to carry out their ends; but, second, it proves something which it seems to me to be very much more significant, and that is that after those strikers found out that they were violators of the law they stopped; they were unwilling to rest under the order of court and defy it.

I want to suggest this thought, which has been suggested before in another form. Congress can not, if it would, deprive any citizen of any personal right of life or liberty, or any right of property; you can not affect the rights of property or of liberty, which have been adjudged by every court in the land, State and Federal. What you

asked to do is to take away the remedy for the protection of those rights. You leave the man his rights; under the Constitution you do not touch them.

Now, what is he to do? This country has not reached the point where men are going to surrender their rights of liberty and of property to the tender mercies of hostile combinations without a struggle, and, if necessary, a fight. The acts that render combinations illegal will be none the less illegal if you pass this bill. You simply take away the injured man's remedy—his protection through the courts. The people who violate these rights are, most of them, unlearned in the law. Many of them are foreign born; they have no opportunity to become versed in our jurisprudence; they have to rely on leaders, like Mr. Gompers, who admits that he is not versed in the law, and whose admission is fully borne out by his statements before this committee.

Now, is it not better, is it not kinder, that these people should learn that the laws of this country are through the service of the process of the court of equity and by the posting of that process, than it would be to let them learn that lesson at the mouth of a rifle in the hands of the property owner or of the sheriff or of the militia? That is the alternative. You can not take away the rights of property or the rights of individual liberty. You can only deprive the citizens their remedies to protect those rights. If you deprive a citizen his remedy in the courts, he is not going to give up those rights; he is going to fight for them, and you are going simply to substitute a reign of anarchy for the orderly administration of justice in the courts.

If there are any questions, I shall be glad to answer them.

MR. ALEXANDER. I would like to ask Mr. Bond one question.

Have you any objection to compulsory arbitration—the people you represent?

MR. BOND. I do not believe it is a feasible scheme, that is all, Mr. Alexander.

MR. LITTLEFIELD. Is there any practical method of enforcing a decree on the part of either party—that is, compelling a corporation to comply with the decree or compelling the labor organizations, on the other hand, to comply?

MR. BOND. You might compel, I suppose, the corporations to submit disputes to arbitration preliminarily, but you can not compel anybody to serve a corporation or serve anybody else, to give his personal services, except by his own free volition. As far as the roads are concerned, our process of treating with these organizations is quite complete and conservative, and after we get really possible people on both sides together we rarely fail to have an agreement. Of course, there are thousands and thousands of disputes, but they are thrashed out and eliminated by passing through the hands of officers of both sides, until they get to some important questions which finally come to the heads of both sides.

But what is the embarrassment in every public-service corporation, and what has never been quite worked out, is that the corporation has ties to the public on one side which are absolutely mandatory and it is interposed between it and the agents whom it must employ to discharge those duties, not a subcontractor, not any responsible party, not an organization which is entirely independent, and except in so far as they may be subject to the interstate-commerce act, absolutely

free from any of the responsibilities which the corporation as an employer owes to the public. It is an anomalous condition, but it is being worked out in a practical way by the rule of thumb. There is no principle that you can apply to it.

Mr. THOMAS. Do you think that any system of compulsory arbitration could be made possible?

Mr. BOND. No, sir; when it gets to that point the men would rather make their own contract, and it is really a great deal better to let the parties fight it out, if they have to fight it out, in my opinion. I think that would cause less discontent after they did reach an agreement than if both sides were coerced, as it were, into leaving the matter to some third person whom neither side would believe knew his business.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, April 12, 1906.

The committee met at 11 o'clock a. m., Hon. John J. Jenkins, chairman, in the chair.

STATEMENT OF MR. T. C. SPELLING.

Mr. SPELLING. Mr. Chairman and gentlemen of the committee, in the first place I desire to offer a substitute for House resolutions 4445 and 9328, and it may be considered a substitute for all the other bills before the committee on this subject. At any rate, I propose submitting it to-day and making an argument in support of it before the committee as a definite proposition and programme for the interests which I represent—the American Federation of Labor.

The CHAIRMAN. Let me ask you if in your argument you intend to include the bills introduced by Mr. Gilbert, of Indiana, and Mr. Henry, of Texas, those bill requiring notice before the injunction is issued? Do you intend to touch upon those measures?

Mr. SPELLING. I shall speak upon what the Federation of Labor demands and seeks in legislation before Congress, and it is all embodied in the bill which I have here.

Mr. GILLETT. This, then, is a substitute for the Gilbert bill and the Little bill or any other bill which may be pending here referring to the question of injunction?

Mr. SPELLING. Yes, sir; for everything. And to save time I might as well read it.

Mr. Spelling here read the substitute bill referred to, as follows:

A BILL to regulate the issuance of restraining orders and injunctions and procedure thereon and to limit the meaning of "conspiracy" in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no restraining order or injunction shall be granted by any court of the United States, or a judge, or by the judges thereof, in any case between an employer and an employee, or between employers and employees, or between employers, or between employees, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers, or involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant, or by his, her,

or its agent or attorney. And for the purposes of this act no right to continue the relation of employer and employee, or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property, or as constituting a property right.

SEC. 2. That in cases arising in the courts of the United States, or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption, or creation, or termination of any relation between employer and employee, or concerning any act or thing to be done, or not to be done, with reference to, or involving, or growing out of a labor dispute, shall constitute a conspiracy or other criminal offense, or be punished or prosecuted as such, nor shall the carrying out of any such agreement be restrained or enjoined, unless the act or thing agreed to be done, or not to be done, would be unlawful if done by a single individual; nor shall the entering into or carrying out of any such agreement be restrained or enjoined, unless such act or thing would, if done or not done, be of the character described in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Gentlemen, this bill has been considered somewhat by the officers of the American Federation of Labor. They think and I think that it covers the case. You understand what I mean by that. Of course, if they should discover any defect in it or any addition required, they would have the right to suggest an amendment, and of course it is very likely to be amended or reported upon adversely or reported upon favorably. It is merely a concrete proposition for what we demand, and we submit it as a substitute in the way I have already stated.

Mr. Chairman and gentlemen, we have a letter here from ex-Senator Turner, addressed to Mr. Andrew Furuseth, who is representing the same side as I am, and if you have no objection, I will request that Mr. Louis A. Sterne may read this letter before the committee, as it will save me that much exertion, and then I will go on with my argument.

[The letter referred to was here read and is printed separately.]

Mr. Chairman and gentlemen of the committee, I realize that this is a very far-reaching question. If it were simply a matter of remedies, procedure, it might be along narrow lines, but to confine ourselves to legal disquisitions on this subject would be as impracticable as to construct a ditch without any regard to the volume and current of water that is to flow through it. We must take a broad view of industrial conditions and industrial relations. This is an industrial nation, and the welfare of all depends upon production—that is, the joint operations of capital and labor. If we go back to primitive conditions—that is, prior to the advent of corporations and associations—we find that even then capital was an organized force. There never was any labor question until the advent of men in a position to employ a large number of laborers.

You take any community and let a man come into it with a large amount of capital desiring to employ a large number of men and he is, in and of himself, an organized force, and whatever he sees fit to prescribe as a scale of wages will usually govern and control in that community in the absence of an organization among laborers. And so we find it everywhere, and we find this condition and tendency accentuated at the point of arrival of associations of capital in the form of corporations; you find that almost as a matter of course the

question of wages, the scale of price to be paid for labor, comes uppermost in the minds of associated capitalists. I do not care whether it is a corporation having control of the production of a commodity or a combination of corporations in the form of a trust. the question of what they shall pay labor rises uppermost, because such a large proportion of the outgo consists in wages that a small reduction in the wage price means a large profit. Consequently, with labor unorganized, there is an inevitable tendency to depress and force wages down to the lowest level which will allow a bare subsistence.

Another thing of which we must take notice the moment we begin to consider this industrial question—this conflict continuous between capital and labor—is this, that for all practical purposes of this day and age—not in the ideal condition of which some philosophers dream and which the socialists propose, when there shall be peace and harmony between all communities, but in this practical age—there is an inevitable, irrepressible, and incessant conflict between capitalists, at least for the volume of trade, and between the capitalists or the great aggregations of capitalists and labor with regard to wages. Now, I might illustrate that by a great many cases in point, but I will not take up your time to do that.

This conflict, I have said, is inevitable, and of course the opponents of all legislation favorable to labor say that there ought to be peace, there ought to be harmony; that there ought to be arbitration, even if it is compulsory; but I tell you that is not the normal nor the possible condition, and I say that they had better first harmonize this incessant conflict, this bitter war, between capitalists, before they undertake to propose submission and enforce peace on the labor organizations.

I desire now to give you the views of some learned men on this proposition, because sometimes it is suspected that a person speaks from an interested standpoint. I desire to read first from what Lord Coleridge said in the great case of the *Mogul Steamship Company v. McGregor*, 21 Q. B. Division, 544 (1892). This is a case of conflict between capitalists for the control of the carrying trade of the ocean. The court said:

There can be no doubt that the defendants were determined, if they could, to exclude the plaintiffs from this trade. Strong expressions were drawn from some of them in cross-examination, and the telegrams and letters showed the importance they attached to the matter, their resolute purpose to exclude the plaintiffs if they could, and to do so without any consideration for the results to the plaintiffs if they were successfully excluded. This, I think, is made out, and I think no more is made out than this. Is this enough? It must be remembered that all trade is, and must be, in a sense, selfish. Trade not being infinite—nay, the trade of a particular place or district being possibly very limited—what one man gains another loses. In the hand-to-hand war of commerce, as in the conflicts of public life, whether at the bar, in Parliament, in medicine, in engineering (I give examples only), men fight on without much thought of others, except a desire to excel or defeat them. Very lofty minds, like Sir Philip Sydney, with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sydneys, but these counsels of perfection it would be silly indeed to make the measure of the rough business of the world, as pursued by ordinary men of business.

Now, on the same subject I read a short extract from the decision of Judge McKenna, in *Continental Insurance Company v. Board of Fire Underwriters* (67 Federal Reporter, p. 318). In that case there was a combination among the insurance agents representing fire in-

insurance companies on the Pacific coast which was absolutely destructive of competition, for it drove all opposition out of business. Justice McKenna says:

My function is not of that kind or degree which may assent to or oppose all the views urged, and eloquently urged, by counsel. No doubt many methods which business competition or advantage uses may, if contemplated from one aspect, seem to call for legal repression; and, as Lord Justice Bowen says, legal puzzles which might well distract a theorist may easily be conceived of imaginary conflicts between a group of individuals and the obvious well-being of other members of the community. These reflections admonish us not to judge from a too abstract contemplation of evils, not to attempt to distinguish fair and unfair competition from debatable considerations of political economy, but to adhere to and decide the questions in the case of legal precedents. This, though it may seem narrow from some points of view, is as broad as a legal tribunal may indulge, whose confined function is, as has often been said, to administer the law as it is, not as it ought to be.

Gentlemen, I have already said that the same conflict that goes on between capital for the trade of the world, which is not infinite, goes on and is unavoidable between capitalists, whether in individual hands or in corporate hands, or in the hands of these mighty combinations and labor, and without organization the tendency inevitably is for labor to descend, and that rapidly, to a condition of absolute servitude and helplessness. I say that, in the nature of things, and under present conditions, this warfare is unavoidable, and there is the same justification for organized labor resorting to the legitimate and recognized methods of warfare, in its hard and unequal struggle against capital, that there is expressed in these extracts that I have read, in the conflicts of capital against capital, and the learned justices have shown you what extraordinary lengths are held justifiable.

Here is an extract from the opinion of Mr. Justice Holmes, now on the Supreme Bench. This is from the decision in the supreme court of Massachusetts in the case of *Vegeahn v. Guntner* (167 Mass., 92). The court says:

It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it is, or detrimental, it is inevitable, unless the fundamental axioms of society, and even the fundamental conditions of life, are to be changed. One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is potent and powerful. Combination on the other is a fair and equal way. * * * If it be true that the workmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has, to support their interest by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control.

That opinion of Mr. Justice Holmes has not been accepted and acted upon, as it ought to have been, but some of the Federal courts which issue those high-handed injunctions—no better term comes to my mind just now; that is probably too severe, but as I have used it I will stand by it—admit that what Justice Holmes said in that case ought to be the law, but they assume that the law—that is, the jurisdiction—is otherwise; that it has been expanded by precedents, by which I mean, and they mean, those unauthorized and unjustified precedents that they themselves, these Federal courts, have built up.

So they think that they are not warranted in following in practice and in decision these views of Judge Holmes. But in one case—a case in which they allowed the regular judicial bludgeon in the shape of an injunction to fall upon some strikers who were only resorting to legitimate methods—the judge of the Federal court who delivered the opinion said this about that opinion and that doctrine. That case was the *Union Pacific Railroad Company v. Ruef* (120 Fed. Rep., 111). The judge said:

And Judge Holmes, now of the Supreme Court, is often cited as giving expression to the correct rule in his dissenting opinion in the Massachusetts case hereinbefore referred to, and excerpts from his opinion are often found.

Now, I desire to read from the opinion of Judge Caldwell, one of the few Federal judges who has really studied this question from top to bottom and given it thorough consideration. I hope, gentlemen, I am not wearying you in referring to these extracts, because unless we get these fundamental principles right we will never be prepared to give the legislation that justice demands, and I consider that the time taken in getting these fundamental rights and relations properly understood is not wasted. Here is quite an extract that sounds better than anything I could say, and I hope that you will bear with me while I read it. It is from Judge Caldwell's opinion in the case of *Hopkins v. The Oxley Stave Company* (83 Fed. Rep., 912). That, gentlemen, was a boycott case. The Oxley Stave Company was not only an employer of nonunion labor at a reduced rate, but it used machinery. It used saws to make staves, and they sawed across the knots, and they sawed across the grain, and the staves they made when put into a barrel would break, and the barrels would burst in the hands of the merchants, and a great deal of loss would ensue. And yet they advertised and carried on their campaign to sell those goods with a great deal of energy.

Now, the union men throughout the West found out about this, and they resolved to do what a great many people say is "boycotting." They did no more than this: They met and investigated and informed everybody they knew, merchants and dealers in staves and in barrels, and in merchandise generally, about the inferiority of those goods. It was proven in that case that what they said was absolutely true. The court said:

These men may do that as individuals, but when they combine to do it, not only is it a crime, but it is the power and the duty of a court of equity to enjoin.

A false conclusion and a usurpation of jurisdiction, all in one breath. But I will say right here, parenthetically—that is not necessarily connected with what I am about to read—but it was a positive benefit to the whole community of the United States for those men to give that information, so that the public might not be imposed upon. They had another interest. Their employers were losing the trade, and were liable to be bankrupted. Not only were their wages liable to be reduced, but they were liable to be thrown out of employment, so that they had a direct, vital, and financial interest in defending themselves by giving this information to the public. That, gentlemen, is one of the usurpations. This is a dissenting opinion of Judge Caldwell in that case:

While laborers, by the application to them of the doctrine we are considering, are reduced to individual action, it is not so with the forces arrayed against

them. A corporation is an association of individuals for combined action; trusts are corporations combined together for the very purpose of collective action and boycotting; and capital, which is the product of labor, is in itself a powerful collective force. Indeed, according to this supposed rule, every corporation and trust in the country is an unlawful combination; for while its business may be of a kind that its individual members, each acting for himself, might lawfully conduct, the moment they enter into a combination to do that same thing by their combined effort, the combination becomes an unlawful conspiracy.

Now, gentlemen, can anybody answer that logic? (Reading:)

But the rule is never so applied.

That is so. I continue to read:

Corporations and trusts and other combinations of individuals and aggregations of capital extend themselves right and left through the entire community, boycotting and inflicting irreparable damage upon, and crushing out, all small dealers and producers, stifling competition, establishing monopolies, reducing the wages of the laborer, raising the price of food on every man's table, and of the clothes on his back and of the house that shelters him, and inflicting on the wage-earners the pains and penalties of the lockout and the black list, and denying to them the right of association and combined action by refusing employment to those who are members of labor organizations; and all these things are justified as a legitimate result of the evolution of industries resulting from new social and economic conditions, and of the right of every man to carry on his business as he sees fit, and of lawful competition. On the other hand, when laborers combine to maintain or raise their wages, or otherwise to better their condition or to protect themselves from oppression, or to attempt to overcome competition with their labor or the products of their labor in order that they may continue to have employment and live, their action, however open, peaceful, and orderly, is branded as a "conspiracy." What is "competition" when done by capital is "conspiracy" when done by laborers. No amount of verbal dexterity can conceal or justify this glaring discrimination. If the vast aggregation and collective action of capital is not accompanied by a corresponding organization and collective action of labor capital will speedily become proprietor of the wage-earners, as well as the recipient of the profits of their labor. This result can only be averted by some sort of organization that will secure the collective action of wage-earners. This is demanded, not in the interest of wage-earners alone, but by the highest considerations of public policy.

Gentlemen, take the last sentence, "This is demanded, not in the interest of wage-earners alone, but by the highest considerations of public policy." If I did not believe that I probably would not be here to-day.

I desire, gentlemen, to call your attention to the fact that the Congress of the United States in 1886 gave express recognition to all the purposes of labor organizations. It authorized incorporations to carry out those purposes, and specified them in an act. It recognized the legal character of any association of working people, having two or more branches in the States or Territories of the United States, and established for the purpose of teaching its members to become skillful and efficient workers. I now call your attention to the language defining the purposes these organizations might have.

For the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of the sick, disabled, or unemployed members or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit.

Now, you gentlemen all understand the law of private corporations. When a grant of power is given by statute to a corporation, whether

it be under special act or general laws, every lawful means—mark you, every lawful means—that may be used or employed by the incorporators can be resorted to, and there is no court of equity under the sun that has any power to prevent them. In an effort to maintain wages, to better their social and industrial conditions, and the other objects mentioned in that act of Congress, they have a right to do any lawful act. Have they not the right, then, if necessary, to go out and persuade their strikers to stand firm, or those seeking their employment to desist? Have they not the right, if it will aid the cause, to give money to them, to give sympathy and encouragement, to open reading rooms, to meet on the commons or on any private premises where they are permitted to meet? Have they not the right even to furnish music for their entertainment and to collect those people in crowds and make speeches to them? Those acts, gentlemen, are instances of exercising the liberty of speech guaranteed by the Constitution, and they are as much the right of those men as it is my right to stand here and address you to-day. I do not know whether those unions have ever taken advantage of that act or not. Have they ever been incorporated, Mr. Gompers?

Mr. GOMPERS. Very seldom.

Mr. SPELLING. It shows, gentlemen, how this matter was looked upon before the public mind became prejudiced and influenced improperly and before the virus of usurpation had afflicted the minds of the courts.

Mr. PARKER. The act you refer to is on page 495 of the first supplement, chapter 567, entitled "An act to legalize the incorporation of trades unions."

Mr. SPELLING. Thank you for giving me the reference. As much as we may favor the purpose of the Hague tribunal for the promotion of peace, as much as we may desire the attainment of absolute prosperity and peace between labor and capital, we all know that these conflicts called strikes and lockouts frequently occur, and are liable to frequently occur. That is one of the conditions of society for which no remedy has ever been found and probably none ever will be found. It is inconvenient for us who are not immediately interested or involved; but whatever inconvenience or deprivation it may inflict upon us, we have to endure it, just as we have to endure the coming of a contest between two of these gigantic monopolies. We have to submit to the extortion when some of these small industries throughout the country are strangled to death by the octopus, and, so far as I am concerned, I do not know any remedy against that unless we amend the Constitution.

Workingmen are not in the habit of trying to get some court to exceed its jurisdiction. They are fighting this battle between capital and labor bravely—fighting it in the open. They do not do business, and from the fact of their greater numbers they can not do business, behind closed doors in little rooms about half the size of this room. They must wage their war openly and in the public eye. But they do not go filing affidavits and trying to steal a march on the enemy by some cowardly trick. I do not know of but one instance in which workingmen ever applied for a remedy against a combination made against them and a blacklist. Why the blacklist of the workingmen? They form these combinations; they use all manner of cruel and unusual weapons to destroy the organizations; but we recognize that

they have that right. We do not plead the baby act at all. We do not withhold anything that we claim ourselves, and, on the other hand, we claim nothing which we are not willing to concede. Now, in that case to which I just referred there was a lockout.

Mr. TIRRELL. If you will allow me, your remark calls my attention to something which I saw in a Boston paper a few months ago, and I would like to know if it agrees with your knowledge of the situation. This is a case in which the injunction was asked for in the superior court in Boston, an injunction asked against union men, which came before Judge Fessenden, a most estimable judge, a Democrat, of our State. After listening to the counsel for the defendant, Judge Fessenden said:

The courts of our State recognize the labor organizations as orderly and legal organizations and as entitled to the benefit of the law. The members of these are as much entitled as any other men, and have the right to come to me or any other member of the court for a decision.

I say that the labor organizations have before now come to me for assistance, and I have myself, at the request of such organizations, issued injunctions. I believe this court is inclined to be at all times right and is in favor of labor organizations as such, and I should dislike that the court should issue an injunction against a labor organization because it is a labor organization.

I have made an injunction at one time which amounted to a great deal to them, but it did at that time impose some restrictions.

Does your knowledge of the situation generally agree with that statement of Judge Fessenden?

Mr. SPELLING. What part of the opinion do you refer to, the fact that they frequently come for injunctions?

Mr. TIRRELL. I understood you to say that the labor organizations did not ask for injunctions.

Mr. SPELLING. I said that the only case I ever heard of was that in 167 Massachusetts, the case of *Worthington v. Waring*. I think this will give complete satisfaction on the point to which you called my attention. They applied for relief against a blacklist, a monopoly or combination of capital. This opinion is by Mr. Chief Justice Field, delivering the unanimous opinion of the court. This is a decision against labor. I say that the decision is right. That is what organized labor says. I have explained the position that they take, as I understand it, that the thing is a legitimate weapon of warfare, and that their efforts to keep men in line by the means that I have suggested are also legitimate, and that no court of equity has any business interfering in any of these cases. I read from page 423:

The only grievance alleged which is continuing in its nature is the conspiracy not to employ the petitioners, and there are no approved precedents in equity for enjoining the defendants from continuing such a conspiracy or for compelling the defendants either to employ the petitioners or to procure employment for them with other persons. See *Boston Dlatite Co. v. Florence Manufacturing Co.* (114 Mass., 69), *Raymond v. Russell* (143 Mass., 295), *Smith v. Smith* (148 Mass., 1), *Carlton v. Rugg* (149 Mass., 550), *Workman v. Smith*, (155 Mass., 92). It is plain, however, that the petition was drawn with a view to obtain some equitable relief. It is well known that equity has, in general, no jurisdiction to restrain the commission of crimes or to assess damages for torts already committed. Courts of equity often protect property from threatened injury when the rights of property are equitable or when, although the rights are legal, the civil and criminal remedies at common law are not adequate, but the rights which the petitioners allege the defendants were violating at the time the petition was filed are personal rights, as distinguished from rights of property.

Now, gentlemen, let us not forget that. The line between personal rights and property rights is the line between these rights asserted by labor and a proper function of the courts to protect property.

I just want to give a little elaboration of this, and I will go on and cite some more authorities. Let us suppose that a class of manufacturing exists. We will take Fall River; that is in Massachusetts; I happen to have that in mind. Suppose a manufacturer there manufactures cotton goods. Suppose there is also a manufacturer at Providence in the same business and one, we will say, over at Hartford. We have a thousand men in each one of these factories. They are unorganized. Well, the manufacturer at Hartford and the manufacturer at Providence are liberal in their character and liberal in their views. They are willing to concede a fair wage and reasonable hours. They want these men to have not only the necessities of life, but some of the comforts. The man at Fall River, we will say, is at this time paying the same wages, but he is of a meaner disposition than the other two; he is avaricious, and he is indifferent somewhat as to the welfare and as to the condition of labor. He calculates that if he can take 25 cents a day off of each one of those men, that will amount to \$250 a day. He can then give the trade throughout the United States a reduction of 15 cents upon the product of one man and still have a profit left of 10 cents a day on that product, which is \$100 a day. You see the temptation. By that reduction of 15 cents he gets the trade of the United States, or would get it if he were not checked.

The man at Hartford and the man at Providence find out what he is doing. They are losing their trade. Labor, as I have said, is there unorganized. These two men easily satisfy their consciences—and I do not know but they are right as a matter of self-preservation—they easily satisfy themselves that they are warranted in making the same reduction, and so they do that. They say that it is better for these men to be employed, even at smaller wages, than to be out of employment entirely. The men at the Fall River shop, unorganized, are absolutely helpless in the face of that reduction. Of course it is within the range of possibilities that they may strike, but they are unorganized. A few may quit, one or two at a time, but their places are immediately filled by the great army of unorganized labor pressing from behind. So the plant moves right on. But your Fall River man, having been checkmated in getting the trade of the country by the other two also reducing wages and who is losing his profit, would, unless the workingmen, the operatives, organized, repeat the act of cutting wages again. And thus the whole body of those men in those three places would be drawn down into the vortex of dependence, a wretched state of destitution.

But when this danger threatens these men all get together and form an organization of 3,000 men. They put up 25 cents a month or 25 cents a week each, and they get several thousand dollars in the treasury. Then when the Fall River man proposes a reduction in wages they go or send their officers, who are, by way of epithet, called "walking delegates." They send an officer to tell those men at the Fall River shop, "Do not accept the reduction; stand out for your rights; if necessary, strike." They are in the union. Well, those men are subject to an order to strike, and they do strike. Now,

I believe that nobody has the hardihood to say in the face of the decisions that men have not an unlimited right to strike when it is to their interest to do so. I am not speaking of that. I am discussing the tendency of things.

Now, those men have struck. The opponents of this legislation, the enemies of union labor—and they are not few—would say that the men at the other two mills ought to go quietly from the shops where they work to their homes and leave the situation there as quiet as a graveyard; that they ought to leave the strike to take care of itself, and if they do leave it to take care of itself there will be inevitably a break in the ranks. It is scarcely necessary to tell you why that is so. The men on a strike are in a condition of great anxiety. Their situation is critical, and it will be strange if in a thousand men one or two do not become a little solicitous and finally become disheartened and break down and finally desert and go back; and when there is a break in the ranks others follow their example and soon there is a stampede and the strike is lost. Then the result, gentlemen, is just what I told you a while ago would be the result, as you can plainly see, if the laborers of those shops were unorganized.

But these men in the exercise of their right given by the Almighty and by the Constitution of the United States furnish this financial aid, advise those men, and give them sympathy and encouragement, and they adopt legitimate methods to do it. They establish a reading room or a place of public meeting, or they might have a camp, somewhere that those men could go and get a cup of coffee and engage in conversation. That is called picketing. In this book of the hearings before Congress there are hundreds of injunctions against picketing; and I say that if men have not a right to go to a place by permission of the owner and stay there, assemble there, and rendezvous there for the purpose of helping their fellows engaged on a strike, then they have no rights in the world that anybody is bound to respect.

Mr. PEARRE. You say, "With the permission of the owner." Do you mean that?

Mr. GILLET. Where they assemble.

Mr. SPELLING. The owner of the ground where they rendezvous. Now, gentlemen, I desire to say of course it is your duty, and you know it without my telling you, to consider the interests of the public. What is the interest of the public? I tell you, gentlemen, that the people of the United States, outside of manufacturing, outside of the unions, have no interest whatever except a sentimental interest in the question whether any one man or any one corporation carries on business at Fall River or at any other place in the United States, or carries on business at all. If one fail and retire, there are others to take his place. Why, do you not see the result of the struggle of competition? You find a man in the front rank of the legal profession in a town. Something happens; he makes some mistake; perhaps his enemies become active; others come to the front, and he loses the lead. Perhaps he deserves to, and perhaps he does not. At any rate, sooner or later he takes a back seat and retires from the field.

Now, of what interest is that to the public? You know, gentlemen, that the public never pretends to take any interest in that, except a sentimental interest, and I say that no court of equity has any more

right to interfere in the manner in which they have been interfering in these labor disputes than a court of equity would have in that case to set up as a peace officer, a guardian of the morals of the whole community, and compel the whole community to do what that court conceives to be justice, poetic justice, to that lawyer. And the same is true of merchants, and the same is true of manufacturers. But I will tell you, gentlemen, what the public has an interest in in this same illustration of the Fall River man. Take all these three manufacturers, taking them to represent the whole industry of the country. If those three men get all the profit, they put it in a private bank account. Does that do the public any good? It may do the public some good, and we would dislike to see any good citizen and any "captain of industry" fail in business.

But what is the real interest of the people of the United States aside from these sentimental interests? If, on the other hand, they pay out better wages to those 3,000 men, the increase goes over the counters of all the shops and into the shops of the shoemakers, and to the milliners and the barbers, and everybody, and it goes into general circulation in those communities. Not only that, but these shop keepers and storekeepers are enabled to buy more goods. Some of that money goes to manufacturers again, and elsewhere. It goes to fisheries and to miners, and it goes to farmers; because the extra money that those men get is used to buy farm products that they need to support them. That is where it benefits the public. Why, gentlemen, the steel trust last year had a net profit of \$119,000,000. I do not know what its labor gets, but it is dissatisfied, and I have no doubt that it has cause to be.

Do you not think it would have been better if half or two-thirds or three-quarters of that \$119,000,000 had been distributed in the many towns and cities where that trust has its plants, and been spread broadcast throughout the length and breadth of this country? Do you not think it would have been better, even if those men had received more than you or myself, sitting as a high priest of finance and commercialism, or than some of these Federal judges in the positions that they take, might consider to be their due; that it would have been better to have had this money distributed among the people? It would have been better for everybody. That is the interest that the public has in this matter, and I say that that interest and that contention is along the lines of justice, along the lines of public justice.

Mr. TIRRELL. I would like to ask you this for information.

Mr. SPELLING. Yes, sir.

Mr. TIRRELL. As to whether in the steel trust the employees do not make an agreement, the unions do not make an agreement, with the companies extending over certain periods of time which regulates the wages they receive—how is that?

Mr. SPELLING. They do the very best they can. They are very conservative; like all workmen, or all I have ever seen, if they are forced to take \$2 a day and they think they are entitled to \$3, of course they accept the \$2 and do the best they can.

Mr. STERLING. Do you think it would have followed necessarily if more of those profits had been paid out in wages that it would have helped the public necessarily? Would not they have increased the

price on the products just the same, and would not the public have had to pay this additional price, anyway?

Mr. SPELLING. Gentlemen, that is a question that you should look at. As the matter now stands those combinations have the power by their mighty privilege of combination and the monopoly weapon, the combining power that they exercise, and they can take whatever prices they please from the public, and the vast proportion of all the labor in the country must go to them to get employment.

Mr. STERLING. A coal company out in my town raised the price of coals 5½ cents a ton. They raised the price of coal 25 cents at the same time.

Mr. SPELLING. I do not say that they are altogether bad and irredeemable. Of course it is to their interest that their men should be strong enough to make them strong and to make them contented to a certain extent.

Mr. STERLING. Sure.

Mr. SPELLING. That is, at any rate, that they should be able to lead the "simple life." Their interest goes that far. But I want to say this, in reply to that proposition: Did they raise the wages 5½ per cent?

Mr. STERLING. They raised them 5½ cents per ton.

Mr. SPELLING. The cost of living increased in that time 10 per cent, so that really they have been able to force down the wages of those men.

Mr. GOMPERS. I want to say, to the question that Mr. Sterling asked the witness, which I wrote down on a piece of paper that I expected to have handed to Mr. Spelling, that I should be pleased to be questioned along that line if it is necessary.

Mr. SPELLING. Now, speaking of the coal trust, I want to remind you of this. Sterling is your name [addressing the member of the committee]?

Mr. STERLING. Yes, sir.

Mr. SPELLING. I am not here to carry on a crusade against the coal trust, yet I am "agin" it. As the Irishman said when he came to this country, that he was "agin the Administration," I am "agin" the coal trust—that is, its methods. That is no secret. The coal trust conceals its profits. The coal trust is composed of a number of coal roads in the main. They control the anthracite supply and a great deal of the bituminous coal throughout the country. They make enormous profits. They are bound to. That conclusion is inevitable. They get their profits in the form of dividends on watered stock in these railroads. They have raised the price of coals of Reading from \$40 to \$164 in the last ten months. They have raised the price of the Lackawanna, which is a coal road, about 30 points, and they have raised the Delaware and Hudson in about the same proportion. That, gentlemen, represents the profits on coal. That is 400 or 500 per cent. They have raised, you say, the wages of labor 5½ per cent.

It is a diversion to take up these matters, and I would like to get back to my argument.

Mr. PEARRE. To what bill are you directing your argument?

Mr. SPELLING. The substitute that I read a while ago. These questions are behind and involved in the provisions of that bill.

Mr. PEARRE. Have you looked at House bills 17976 and 17975, which have been introduced by Mr. Henry?

Mr. HENRY. I called Mr. Spelling's attention to them.

Mr. SPELLING. I will come to those before I close.

Mr. PEARRE. Proceed.

Mr. SPELLING. Now, gentlemen, a notion has gone abroad in this country—a vague conclusion—that if anybody does anything by agreement against anybody else that is a boycott. I would call it a crusade. Where there is one crusade inaugurated by labor against capitalists—I do not use “capitalists” in any offensive sense, but it is a convenient term to describe the employer of labor—where there is one of those crusades inaugurated by labor there are a thousand inaugurated by other interests.

If I find out that some druggist is selling impure drugs and is adulterating his drugs, and I tell everybody that I see, that is within the definition of a boycott which is accepted by those who form employers' associations and antiboycott associations and citizens' alliances to oppose union labor. That is the boycott. If that statement of mine about the druggist is false, of course it is a criminal slander in some of the States. In any of the States it is unlawful and actionable; but it comes within their definition of a boycott, and upon precedents that they could find—and plenty of them, too—they would have the same right to have me enjoined from making statements broadcast about that that they had in those cases where the courts issued those arbitrary orders, called injunctions, against union labor. And the case of *Hopkins v. Oxley Stave Company*, in 83 Federal Reporter, page 912, is a case in which there was not as much justification for the injunction as if I did that thing and was telling the truth and a court usurped the authority to enjoin me.

Gentlemen, I proceed a step. If I can do that, as I believe you will concede that I have the right, I have the right to get together a thousand men, and they can do that by agreement, because that is for the benefit of the community. I say there are a thousand such boycotts every day in the business world. Suppose the War Department is about to let a contract for carrying supplies to the Philippines for the soldiers. It is negotiating with the Northern Pacific and the Union Pacific. The Union Pacific will set forth in documentary form and orally to the Secretary of War all the advantages of that line. It will point out all the disadvantages of the Northern line. The merchants of Omaha and San Francisco will get together—the merchants' associations or something of that kind—and they will send somebody here to Washington to do the same thing, to point out the advantages of Omaha and San Francisco as cities to handle that business, and they will point out the disadvantages of St. Paul and Seattle, on the Northern Pacific line, and they will do that with all the strenuousness that they can command or can control; and that must be called a boycott if those things that have been enjoined in these decisions amount to a boycott.

Now, on that there are some authorities—right along that line. I say that anything that a man can do individually without criminal consequence he may do in connection with others. This idea as to a thing done by one man, that though that be legal it becomes illegal when done by more than one and by agreement, is an idea that originated in England before the courts had made progress in jurispru-

dence and before there had been progressive legislation on the part of Parliament. That fundamental error originated in the case of *Rex v. Journeymen Tailors* (8 Mod. Rep., p. 11). The judge in that case did not have the capacity for paraphrasing and employing fine words and fine phrases that some of our Federal judges have in these times, when they want to do wrong and haven't any good reason at hand for doing it. This old judge said, bluntly and plainly:

A conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do if they had not conspired to do it.

That is the language of this tool of a despot. I think that was two centuries ago, when the King was seeking and endeavoring to completely subjugate labor and reduce it to that condition of feudal servitude in which it had been a long time ago. But a different view, as I said just now, has since prevailed in England, but not in this country. I will come to that later. I wish to read to you what Judge McPherson said in that case of the *Union Pacific v. Ruef*. He said:

I can not understand how two lawful acts, or the lawful act by each of two persons, can make an unlawful act, any more than I can believe that two ciphers can make a unit.

I do not see how an argument could be so concisely made or in fewer words.

Gentlemen, I want you to understand, and I want everybody to understand who has any interest in this controversy, that I do not pretend to be reading the prevailing views of the courts. These extracts are not the prevailing views of the courts. If they were, we would not be here, perhaps, seeking legislation; at any rate, not the particular legislation that we seek. Do not let it be said that from my own statement and from my own authorities it is apparent that we do not need this legislation. And I make this statement in order to prevent any such misconception or any such misrepresentation.

I read now from another case. This is Judge Caldwell, in 83 Federal Reporter, the case of *Hopkins v. The Oxley Stave Company*, I think, page 912:

This proposition, that it is unlawful for men to do collectively what they may do, without wrong, individually, was enunciated more than a century and a half ago, when all manner of association and cooperation among men offensive to the King, or not in the interest of despotic power or the ruling classes, or not approved by the judges, were declared by the courts to be criminal conspiracies. It was promulgated at a time when, in the language of Mr. Justice Harlan, in his opinion in *Robertson v. Baldwin* (165 U. S., 288, 17 Sup. Ct., 333), "no account was taken of a man as man, when human life and human liberty were regarded as of little value, and when the powers of government were employed to gratify the ambition and pleasure of despotic rulers, rather than promote the welfare of the people," and when laborers had no rights their employers or the courts were bound to respect.

I have here a quotation from the opinion in the case of the *Mogul Steamship Company v. McGregor*, and I overlooked it in its proper connection. I was contending that there was no remedy in a court of equity in the battle of trade. Here is what the Chief Justice said:

Injury to business is *damnum absque injuria* so long as it is inflicted not for its own sake, but as an instrumentality in reaching the end of victory in the battle of trade.

Now, I might recount to you at great length the abuses of Federal courts in the matter of sending forth what may be properly called special legislation—that is, they usurp the legislative power and make an *ex post facto* law and crush and destroy one side in a labor dispute. They turn over the judicial power that the Constitution and Congress has given for other purposes. They turn that over to one side in a trade dispute where vital and far-reaching interests are involved, and that side employs it as an unfair, a crushing and overwhelming advantage against what, despite its numbers, is the weaker adversary. And this legislation is sought in order to mark anew the dividing line between the jurisdiction in law and equitable jurisdiction. I have some authorities on the constitutionality of the bill. I see no room, however, for doubting its constitutionality.

* * * * *

I desire now, lest it be said that I could not give an instance, to mention two illustrations. In the western district of Arkansas the judge of the Federal court issued an injunction against the strikers at the Texas and Kansas coal mine. The case is the *Texas and Kansas Coal Company v. Denney et al.* I recently read an article describing the conditions of those miners, and there never was described anything in all my reading more wretched than the condition of miners working in the plants of those companies. Anyhow, Judge Rogers issued an injunction, and it is no worse than a great many others, and I desire to read part of it to you. Among other things he enjoined them from—

congregating at or near or on the premises of the property of the Kansas and Texas Coal Company in, about, or near the town of Huntington, Ark., or elsewhere—

They could not meet anywhere. They had to wander off in groups consisting of one each and hunt for their graves or hunt for a job elsewhere or faint on the road. They could not, two of them, meet together on the road and travel together. That is forbidden by the words of this injunction.

(Continuing reading:)

near the town of Huntington, Ark., or elsewhere, for the purpose of intimidating its employees or molesting its employees or preventing said employees from rendering service to the Kansas and Texas Coal Company, from inducing or coercing by threats, intimidation, force, or violence, any of said employees to leave the employment of the said Kansas and Texas Coal Company, or from in any manner interfering with or molesting any person or persons who may be employed or seek employment by and of the Kansas and Texas Coal Company in the operation of its coal mines, at or near said town of Huntington, or elsewhere.

They could not persuade a man if they should meet him in Patagonia; they could not persuade him not to go back to work under the terms of this injunction.

Mr. TIRRELL. Was that injunction appealed from? Was the legality of such an injunction as that ever tested? A judge might go on and issue an injunction saying that I can not speak for the next six months. He might do it, but it would be illegal to do it. Was that ever tested?

Mr. SPELLING. I am glad you asked that. I do not know whether it was appealed from or not. It is utterly immaterial. The mischief is always done. The ruin is wrought. The oppression is complete

in a very short time after these arbitrary and ultrajurisdictional orders are granted; and you know that, and are bound to admit it. The right of appeal is not worth the time that it takes to name it in any of these labor disputes. Very few of these workingmen are able to employ lawyers; and suppose they were, it is unnecessary. I think it is absolutely vain and a waste of time for me to undertake to tell you gentlemen, members of the bar, about the utter futility of the right of appeal from these orders. The law is made by a judge assuming to make it in a judicial capacity. It is really special legislation, outside of his authority, and such as might issue from the star-chamber or from the throne of Caligula, and it goes forth as a thunderbolt and it strikes dumb and completely paralyzes one side of this trade dispute. And then you ask me about this right of appeal. It is absolutely worthless and not worth considering.

Mr. STERLING. When was that decision rendered—the decision in the Arkansas case?

Mr. SPELLING. In 1899.

Mr. STERLING. Do you not think that the rule of law is better defined than it was then?

Mr. SPELLING. In answer to that I want to give you another instance. It happened right here. I want to say, lest I may be supposed to admit something, that these injunctions are increasing. They go on being issued with increasing rapidity and in increased numbers. But I want to call your attention to one instance in the city of Washington within the last two weeks. The judge of one of the courts, upon a complaint filed by the Typothetæ, which is an association of employing printers of the United States, issued what was called a "restraining order" against the strikers.

The typographical union—the members of the typographical union—are on a strike. The whole union is not on a strike. Most of them are at work; but the whole union is backing up those who are still out on strike. Now, it happens that heretofore the unions have been working, I think, nine hours a day, and now they refuse to work any longer except at eight hours a day. And, gracious, is not eight hours of that kind of work enough? I know something about it. It is more trying on the nerves; it is more exhausting to the vitality and to the eyes—it is usually done by artificial light—than the hardest kind of study. Are not eight hours enough? But probably it does not become me to argue the merits of that question. That is my view—that eight hours are enough. At any rate, the union stood for an eight-hour day in the printing offices. It happens that these employing printers have a lot of men employed on time contracts at nine hours a day. That time contract means this: That they pay the men every week, and they are to stay with them, I believe, for a certain time, at so many dollars a week. Some of the members of the union went to these men who were working on time contracts and told them that they had a right to quit; that the employers might sue them for damages if they had any case against them for quitting, but that that was the only consequence which could ensue; that they could quit.

I do not know much else there is in this case; I do not care to go into all the facts. But these are substantially the facts: The Typothetæ goes into court and says that the union men are persuading

these contract workers to violate their contracts, and thereupon the court assumes jurisdiction. Like a great guardian of morality or spiritual oracle of everything in this city, notwithstanding that there are adequate remedies at law for the violation of those contracts, he takes cognizance of the moral question involved in giving this advice. And there is nothing surely that I might say—I mean it is not necessary for me to defend the morality of the men violating these contracts—but you gentlemen know that a court of equity has no business to interfere if I advise a man to violate a contract or to do or not to do anything else. That is a specimen of what is going on in this country under the cover of the judicial ermine.

Mr. PARKER. I did not notice the word “persuade” in that previous injunction that you read. Is the word “persuade” there?

Mr. SPELLING. I am not sure. Suppose that he enjoined them from threatening these men. I would like to hear some lawyer come before some well-informed and reasonable and just man who knows the law, knows the limits of equitable jurisdiction, and make an argument that any court anywhere has a right to enjoin a man from threatening another personally under any circumstances. I throw out that challenge, and I am willing to meet it before any one such man, or before any number of such men. However, it is not involved in this controversy; that particular question is not involved here, because, as I said before, we are conservative. We stop short of the utmost boundary of our rights in this bill.

I want to point out to you where another error has arisen, where the courts have absorbed an old error from some bad precedent, and have followed it in a number of decisions, and have built up what would be good law, but which I say is most detestably bad law. They have got across this line which separates personal rights—that is, the right of a man to make a bargain with reference to his labor, the right of a man to do business of a particular kind, or to do business generally or in any particular place or of any magnitude, which I say is a personal right, they have got across the line which divides those personal rights from property and property rights.

Mr. PEARRE. Do not the questions sometimes become mixed?

Mr. SPELLING. No, sir; never.

Now, gentlemen, I have said something along this line before; I repeat it; that no man has anything resembling a property right to carry on business of any kind, or to any extent, anywhere in the world.

Mr. GILLET. What is the good will of a business?

Mr. SPELLING. That is something entirely distinct. That is entirely distinct from the right to carry on the business that is behind that good will. What does the good will consist of? It consists of the location and the name. That is something that by legislation has been constituted property. It is something of legislative creation. And I go further; I say that there has never been a case, and in the nature of things there can not be a case, in which labor has offered any violence or any injury whatever to the good will of a business. That is something so distinct that it is unapproachable by any labor action.

I want to read something from the books that I think is better than anything that I can say on this subject, and I want to give you some of these authorities to think about, gentlemen. I said just now that

an injunction was not the proper procedure against any kind of mere crime, any kind of mere violence.

Although it is not necessary to the making out of our case under this bill, the gentleman raised the question, and I want to read an authority right on that. This is from *High on Injunctions*:

Injunction can not be invoked in matters political—for instance, to preserve the sovereign power—or for enforcement of the criminal laws, nor for the protection of other than strictly property rights.

Then he cites the cases cited by ex-Senator Turner this morning in his letter, and cites a lot of other cases.

On the same point I want to call your attention to what was said by Lord Eldon in the case of *Attorney-General v. Nicol* (16 Vesey):

I know that the court is in the practice of restraining private nuisances to property, and of quieting persons in the enjoyment of private right; but it is an extremely rare case, and may be considered, if it ever happened, as an anomaly for a court of equity to interfere at all, and much less preliminarily, by injunction, to put down a public nuisance which did not violate the rights of property, but only contravened the general policy.

I will come to this property right immediately and show you what it is. I call your attention to this because that is the very source of much of this abuse. The courts, by some kind of legal technique or some exaggerated and artificial course of reasoning, reached the conclusion that a lot of men meeting somewhere on the street or marching along the highway with a brass band, or making speeches anywhere, constitute a public nuisance, and therefore they can enjoin it *pro bono publico*. There never was anything more absurd, more farfetched. Without going into detail, which I hope is not necessary with you gentlemen who are lawyers, I will say that there are cases in which the courts will enjoin nuisances called purprestures on water, but I will not enter upon this.

Now, what is a property right? A property right is nothing distinct from property. I have looked through the authorities and sought in vain to find any distinction that anyone could recognize, or stand or rest upon, between property and a property right, for this present purpose, or, in fact, for any other purpose. I did find some definitions, some good text law, supported by authorities and supporting my assertion. The great dividing line is, as I said before, between personal and property rights. I want to read you this from the 3d edition of *High on Injunctions*, section 20:

Equity has no jurisdiction to restrain the commission of crimes, or to enforce moral obligations and the performance of moral duties; nor will it interfere for the prevention of an illegal act merely because it is illegal. And in the absence of any injury to property rights it will not lend its aid by injunction to restrain the violation of public or penal statutes, or the commission of immoral and illegal acts.

He cites *Attorney-General v. Utica Insurance Company*, and a lot of other cases which can be found at that section 20.

Here is what I found in the case of the *Northern Pacific Railroad Company v. Whalen* (149 U. S. Rep.).

The court said, and this is taken from the syllabus, and it is almost literally from the text of the opinion:

1. The usual, and at the suit of a corporation the only, ground on which, independently of express statute, a court of equity will grant an injunction in a private action for a nuisance is special injury to the plaintiff's property.

2. No employer has such a property in his workmen, or in their services, that he can, under the ordinary jurisdiction of a court of chancery, maintain a suit as for a nuisance against the keeper of a house at which they voluntarily buy intoxicating liquors, and thereby get so drunk as to be unfit for work.

That is clear as a bell, and there can not be any equivocation about that, and it is good law, and I think you gentlemen will recognize it. Just substitute for liquor dealers men employed who quit, go on a strike, and violate the law.

Upon what theory will a court of equity ever restrain any kind of violence except as a nuisance? If men on a strike, or not on a strike, whether they belong to a union or not, whether there is a trade dispute or not, commit trespasses, or whether they have committed a trespass or not, if they are threatening to do it, resulting in irreparable injury, of course the court will enjoin it, and nobody denies that, and that is the only case that comes within the equitable powers of those courts that could possibly arise in a trade dispute. Well, I will go a little further. They may go on the property and they may do it irreparable injury without injuring the corpus of the property. Of course you can imagine a case of a man going on land, a town lot, for instance, and suppose men took an old saw and a file and sat there, under one's window, and filed away every night about midnight. That could be enjoined on this theory, and this alone, that it diminished the rental value of that property. It could not be enjoined because it was a disturbance of the peace, punishable as a misdemeanor.

In the English and American Encyclopedia of Law I find this definition of property followed by a definition of property rights. This is from the Twenty-third English and American Encyclopedia of Law, page 59. I am reading a definition:

Property means that dominion of indefinite right of user and disposition which one may lawfully exercise over particular things or subjects, and generally to the exclusion of all others. Property is ownership, the exclusive right of any person freely to use, enjoy, and dispose of any determinate object, whether real or personal.

He cites a long list of authorities which I will not repeat. Among them is *Hamilton v. Rathbone* (175 U. S., 421), and *Jones v. Van Zant* (4 McLean, 603).

On page 261 of the encyclopedia it is said:

In its proper use the term "property" applies only to the rights of the owner in the things possessed.

And he cites numerous decisions. I defy anyone to distinguish so anyone can see the difference between these definitions of property and property rights.

Now, gentlemen, there is nothing like a good illustration; there is nothing like a strong antithesis, putting the boot on the other foot. Suppose a man is an employer; suppose he is manufacturing watches, and he employs a number of men—well, I will say one man, and he represents a hundred or a thousand. This one man exercises his brain and his muscle and his nerves in making a watch. As a matter of fact it takes, I think, about a hundred men to make a watch, but that one man is representative. The employer has no property interest, he may have a personal interest, and it may be valuable, too, in the continuance of that employment. That man contributes those talents and those exertions. Perhaps the material in that watch

is not worth more than one-fiftieth part of the aggregate value when it is completed, but I tell you that the property right of the employer is in that material, and that holds good at any stage of the process, whether it is one-tenth done or one-half done or completed. In other words, the property is represented and consists in the result of labor and not in the labor itself, and when anybody says, whether a chancellor or a Federal judge or any individual, that any employer of labor has any other interest in the labor of the men in his employ or whom he is seeking to employ he utters an absolute absurdity.

Mr. PEARRE. Has that contention ever been made? I never heard it.

Mr. SPELLING. There is no basis anywhere in the law books for any such thing, except to be found in these absurd and extravagant opinions of these Federal judges, and some of the State judges, too.

Mr. PEARRE. I think you are entirely right. I never heard that right so well stated or claimed in my life. I think that you are entirely right.

Mr. SPELLING. I feel so confident of that that I am willing to put anything in the balance as a hazard.

Mr. PEARRE. I never heard the proposition stated so broadly in my life as that.

Mr. SPELLING. Now, gentlemen, what is this question? It is a great political question. Of course I do not mean a partisan question. It is a question that reaches further and wider and deeper than any other question of this day, except perhaps the question of monopoly, and I am not here to discuss that. We are away behind the times in this country. England learned a lesson at the close of the Boer war that we would do well to profit by. She found the physical standard of her population deteriorating. The physique of the men who were needed to go down there and fight for the Crown had gone down, had retrograded and depreciated. Why, she had to resort to the courageous and unconquerable sons of Erin in order to fill up her depleted ranks, so I am told. Let us beware that we do not continue this policy, or rather that we do not continue withholding the remedy from a great evil that is before us in this country.

I tell you, gentlemen, what you know is a fact, that when a crisis arises, when we come face to face with a critical situation in this country, it is not the sons of the steel-trust magnates, or the coal barons, or the Wall street kings of finance that fight our battles. Those fighting men must be drawn from the great mass of the common people, and in that mass labor largely preponderates. And I simply speak my own opinion and express my own fear when I say, gentlemen, that if we permit this thing to go on we will have reason to curse the overriding and trampling underfoot of the workingmen by judicial thunderbolts that have no warrant in the Constitution or in the law. If we allow the servitude—the complete subjugation and servitude—of workingmen to progressively continue, the time may come when we will have to learn that lesson in this country as it was learned in England.

What has England done? She has taken that lesson to heart. She has profited by it. Why have they enacted a series of statutes in the interest of labor? They have given the fullest recognition to union labor as an organization. Within the last two weeks, gentlemen, they have taken a long step forward. The Government, headed by Sir

Campbell-Bannerman, has almost revolutionized the prejudice-encrusted views of the class in that country that we find in this country fighting labor unions.

I have here a clipping which is copied from the press dispatches of two weeks ago. It was the same in all the papers, substantially. It is as follows:

London, March 30. The Government has surrendered to the Labor party on the trades-disputes bill.

Premier Campbell-Bannerman himself announced in the House of Commons this afternoon that he would support the bill introduced by the Labor party in opposition to the Government measure.

They have 54 members of the union in Parliament.

He advised the House to accept the bill of the Labor party, which then came up for its second reading. It provides complete immunity for trades-unions' funds, the clause relating thereto reading:

"No action shall be brought against a trades union or other association aforesaid for the recovery of damages sustained by any person or persons by reason of the action of any member or members of such trades union or other association."

Otherwise the bill is practically a duplicate of the Government's measure.

The premier explained that the object of the Government was to "place the rival powers of capital and labor on an equality, so that in the event of a fight it should be a fair one."

He thought that the great mass of opinion recognized the beneficial effect of trades unions, especially in the prevention of conflicts. The present situation was created by a judge-made law, which defeated the intentions of Parliament. He advised the House to pass the second reading of the bill, as he was confident that the differences as to detail could be settled in committee.

After some opposition and twitting of the Government for its "cowardly surrender to the clamor of the Labor party," the bill passed its second reading by 456 to 66 votes.

I do not know whether there has been any twitting or such action here. If not, there probably will be.

Gentlemen, I want to call your attention to this. We are able to produce this bill and show that it substantiates what this present dispatch says. I want to call your attention to the far-reaching effect of that legislation. At common law the members of a union are individually and collectively responsible for any damages resulting from a tort committed by their common consent and agreement. Now, is not that so? This English statute repeals the common law and exempts them from that common-law liability.

Mr. PEARRE. Have there ever been any such suits in this country that you know of?

Mr. SPELLING. No; I can not recall any.

Mr. PEARRE. I never heard of any.

Mr. SPELLING. I wish to put some of these excellent views of others into my argument, and, gentlemen, you will bear with me to read this. I do not know that it has any argumentative force generally, but it is very apt.

Mr. PEARRE. You need not read it. You may hand it to the stenographer.

Mr. SPELLING. This is from Bascom's "Social Facts and Principles," and it points out the great progress that has been made in England in such legislation, and he says there seem to be great signs of social renovation which anticipate and prevent revolutions.

That marvelous political history by which England has won her liberty is repeating itself in her social institutions. Combination is freely accepted. The

principle is recognized—a principle fundamental in social renovation—that men may do collectively without wrong what they may do without wrong individually.

“That men do now collectively without wrong what they may do without wrong individually.” Those are the conditions in England.

Mr. TIRRELL. Are not the unions over there responsible and incorporated bodies, with a capital, so that so far as litigation is concerned they would be upon an equality in the courts with the firms and corporations that they had litigation with?

Mr. SPELLING. I never heard of an incorporated labor union having a capital stock. It is entirely foreign to and inconsistent with a social organization.

Mr. TIRRELL. Leaving that out, are they not responsible financially for their acts over there?

Mr. SPELLING. It is my experience that they are at common law just like other corporations, which are partnerships at common law, but it seems that Parliament has just exempted them from that.

Mr. GILLETT. That is the effect of that law which has just been passed?

Mr. SPELLING. Yes, sir.

Mr. GILLETT. Now, they can countenance and encourage any act which brings damage to anyone, and the funds which have been laid aside for the benefit of the union can not be reached in an action for damages?

Mr. SPELLING. That is it.

Mr. GILLETT. At common law they could be?

Mr. SPELLING. Yes.

Mr. TIRRELL. That is what I was driving at.

Mr. SPELLING. I suppose the individuals are still liable.

Mr. TIRRELL. That is the effect of it.

Mr. PARKER. Have you the English act there?

Mr. SPELLING. No, sir; but the act will be handed in later.

(See hereinafter.)

Mr. PARKER. I understood that some of the funds were exempt, but not all the funds. There was quite a long article in Engineering, I think, with an abstract of it and a report of the commission.

Mr. SPELLING. There is one other question that I wish to touch upon. It is suggested by the question of the gentleman from Massachusetts. You see how far England has gone in modifying the common law. Now, what has been done in the United States? Absolutely nothing in the interests of labor. One act was passed—the civil rights bill—in the interests, supposedly, of humanity. I believe it was declared unconstitutional; but, at any rate, it is a dead letter. Then you passed the antitrust law, and the millions of dollars that have been spent from the time of Olney to the time of Moody in futile and vain attempts to enforce that law have been spent in vain. There never was anything accomplished in all that litigation; there never has been anything more brought to light as the result of the hundreds of thousands of dollars spent by the bureau of publicity than could be procured for 25 cents at some printing office in Wall street. And yet a great deal is said about the restraints which have been thrown around organized capital.

Now, two suits, I believe, have been won—the Addyston Pipe Company and the Trans-Missouri case. The Northern Securities

case and the Trans-Missouri stand on the same bottom and amount to the same thing. Some combinations in restraint of trade were dissolved. But to advance at a bound to the conclusion—because I want to save time—you all know that “communities of interest” have united men that control substantially all the railroad mileage in the country, and that monopoly is more complete, more absolute in its prestige and its power than it was before these decisions were rendered.

There was the Addyston Pipe Company case—and all those interests, I understand, are scooped up and united in the steel trust, and they are enjoying great prosperity despite all of the so-called “legislation” against them. By reason of all this, I say, the anti-trust law is a dead letter. The interstate-commerce law stands on the same basis. There are more abuses in the matter of rates and fares, more discriminations and more oppression by railroad corporations than there was before that act of 1887 was passed. I might give you my opinion about the attempts to regulate rates, but that is not called for and is not necessary.

These, gentlemen, are the only legislative attempts to change the common law in this country in the interests of the public. You did pass the eight-hour law, but gave it a limited application, and its enforcement is a farce. There is really no serious attempt to enforce it; or if there is, it is abortive. At any rate, the act, on account of its phrasing and the way it is used, is of no benefit particularly.

Mr. GILLETT. I can cite you a case where it is of benefit in our own State.

Mr. SPELLING. That may be.

Mr. GILLETT. There was a contract on a fish hatchery, and they were working there overtime, and I found it out and informed the Department, and they took it up and stopped it.

Mr. PEARRE. I know of another case where it has been of benefit. They were building a public building in Cumberland, my home, and I learned they were working the men over eight hours, and I called the attention of the Department to it, and it was stopped at once.

Mr. SPELLING. I do not believe that I said that there was no instance of that sort. I said that it was not enforced in such a way as to be of any practical benefit to labor. Now, gentlemen, that is all that has been done. None of that was done in the interests of labor, except, perhaps, that makeshift of an eight-hour law.

Mr. GILLETT. How about the safety-appliance act?

Mr. SPELLING. That is for the safety of the public as well as of the laborer. I say it is not exclusively for the benefit of labor. I do not know whether that is enforced or not.

Mr. GILLETT. Very rigidly, I think.

Mr. SPELLING. The fact that it is enforced is no argument against the legislation we are asking.

Mr. GILLETT. No. I was speaking of the acts that have been passed and are being enforced, and a great deal of good has followed from them not only for the protection of the public, but for the protection of those who had to be engaged in the work.

Mr. SPELLING. I venture to say there is no railroad corporation of any magnitude, or if there are they are very few, where they have supplied any safety appliances except where they found it would increase dividends to do so.

You take the legislation in the interest of capital and there is no end to it. You have your national banking law and you have laws of various kinds. You have bankruptcy laws in order to help business men, and I can not begin to enumerate them. There are volumes and volumes of such statutes. And I say that where labor asks so little, and asks it upon such obvious reasons of justice, simply asking you to go back to recognized fundamental principles, and give labor what it has always been conceded it was entitled to until the modern era of usurpation, I think, gentlemen, you ought to give it very careful consideration, and I hope to see the best results from this attempt to get a bill. And whether you adopt this bill that I have proposed here as a substitute or some other bill, I hope we will get a favorable report from this committee.

I wish to close now unless I am reminded of something.

Mr. FURUSETH. By these usurpations these Federal courts simply create certain crimes and use the equity power to punish them.

Mr. SPELLING. I am under great obligations for the patience with which you have listened to me, and I suppose that if it seems to be necessary after somebody else is heard, if anybody else is heard, I will be allowed a few minutes to reply.

Mr. GILLET. I think so. And if you have any matters there you wish printed, if you will hand them to the stenographer they will be printed.

Mr. SPELLING. I will say in regard to House resolution 17976, introduced by Mr. Henry on April 10, that it simply provides for the giving of notice, and that is incorporated in the bill that I have been discussing this morning.

Mr. PEARRE. Except that your bill provides a certain number of days, five days, and that is reasonable notice. The bill in your hand provides for "reasonable notice," while the substitute provides for five days' notice.

Mr. SPELLING. Just flat five days.

Mr. GILLET. You mean that you can make it ten days or fifteen days, but it can not be less than five days?

Mr. SPELLING. I wouldn't object to six months' notice.

Mr. GILLET. That is the least notice, five days?

Mr. SPELLING. Yes, sir. It depends on the character of the case the time the judge will give, but it must be five days.

The CHAIRMAN. Are you going to have your bill introduced?

Mr. SPELLING. I understand that is not necessary.

The CHAIRMAN. No; that is not necessary.

Mr. SPELLING. I understand that the committee can report a substitute for any bill.

The CHAIRMAN. Certainly.

Mr. SPELLING. Now, in regard to this other bill, No. 17975, introduced by Mr. Henry, of Texas, on the same day. I have glanced over it. It has a great deal to do with the criminal procedure for contempt of court, a subject that we have not touched upon, and in which I suppose the Federation is interested, but I say this is a separate subject and the subject for a separate bill, and the matters covered by this bill that I have been discussing ought not to be embodied in this bill.

Mr. PEARRE. Is it not very easy to be associated in carrying out the purposes of the bill which you offer?

It seemed that the subject was so closely allied that you would like to give the committee some views on the subject, probably.

Mr. SPELLING. I will say this, my friend, that the subject of contempt is one that requires the attention and consideration of this Congress.

Mr. PEARRE. I think so, too; I quite agree with you.

Mr. SPELLING. But it is one that has been given no attention because it had nothing to do with this. But I will say that I see no reason why this should not be settled either by reporting this by a separate bill or making it a section in this substitute bill, or even by incorporating the provisions of the substitute bill in this bill. I do not care. We have no pride of opinion. We are simply seeking the ends of justice, as I conceive it, and we do not care how you gentlemen frame this matter or in what form it appears. I submit you should consider the two bills together, and frame the legislation we are entitled to.

Mr. FURUSETH. Mr. Chairman, since Mr. Gompers is not here it might be well, perhaps, that I should say what is the position of the Federation precisely on that matter, something that Mr. Spelling has not been consulted about at all. That is this, that where an injunction is proper and necessary, there the penalty must be swift and certain, or the injunction itself will be of no value. The contention that labor has been making for several years here is this, that injunctions as such have been issued where they had no business at all to be issued. As illustrating the matter, I can say: Supposing I have a piece of land on which there is timber, and somebody goes upon this piece of land and begins to cut the timber. I do not want to have it cut at all. An injunction is the thing to prevent damage being done to that property, and there is the legitimate use of the injunction, and a legitimate use of the power swiftly and certainly to punish.

Mr. DAVENPORT. Might I inquire of the gentleman whether he or the organization which he represents would be in favor of a law in a case where it was a legitimate use of the injunction to require a previous notice to the party where the doing of the act would, following the giving of the notice, as in the instance that is cited, threaten waste, or the negotiation of a note or negotiable instrument which had been obtained by fraud for the payment of money?

Mr. FURUSETH. I want to say that so far as the question of notice is concerned as to mercantile transactions, neither I, nor I think the American Federation of Labor, has any knowledge about them so as to be able to speak. You gentlemen know that much better than we do. The question we are interested in, let me say to you, is this, that personal rights of men are being filched from them through those processes of injunction.

Mr. DAVENPORT. We understand it—

Mr. FURUSETH. And we want to get back on solid ground.

Mr. DAVENPORT. But the attention of Mr. Spelling was called to a bill which, it was assumed by him, was confined to labor disputes. The bill covers every kind of injunction in every kind of case, and it takes out of the law that provision which was put there so carefully and deliberately by the Congress of the United States in 1872, upon the bill drawn by Senator Carpenter, of Wisconsin, which would make it impossible, provided it was constitutional, to restrain the doing of many acts which have no relation whatever to labor disputes. I do not understand that the American Federation of Labor want to identify themselves with anything which would be held to cripple or

disable the courts from doing anything—issuing injunctions in these cases?

Mr. FURUSETH. Is this a criticism directed to the so-called substitute bill introduced here to-day?

Mr. DAVENPORT. No; it is only directed to the one introduced by Congressman Henry.

Mr. GILLETT. It is not to the one introduced by Mr. Spelling at all?

Mr. DAVENPORT. No, sir.

Mr. FURUSETH. Mr. Spelling has had it simply in his hands and has been giving his opinion on it.

Mr. SPELLING. That is a question that has been discussed before, but I see no occasion for taking it up now, as it is not in the bill that is now before the committee. But at any rate, Mr. Chairman, I wish to know whether there is any good reason, or whether it is necessary that this discussion be continued over from this day. I came here two weeks ago to discuss this legislation. I was told that the matter had been continued in order to give the other side an opportunity to be notified and to be present and participate in this discussion. I came here to-day fully expecting to finish up this matter and expedite this bill through the committee, and it seems, if I am not mistaken, that there has been an intimation that it was going over again in order to give them a chance to discuss it. Is that correct?

The CHAIRMAN. All the information I can give you is that when this hearing was determined upon it was said that we would commence this morning and hear arguments for and against the constitutionality of these several bills, and that the further hearing would be on the 18th, for the purpose of hearing any gentleman who wanted to discuss the merits of the law on either side. That was the arrangement that was agreed to unanimously by the committee.

Mr. SPELLING. I have said very little about the constitutionality of this bill, because I did not want to discuss that extensively. It is because its constitutionality has not been assailed.

Mr. GILLETT. I suppose perhaps they would assail it on the 18th.

Mr. SPELLING. Why do they not do it to-day? They are here.

The CHAIRMAN. The committee does not control these things, and if there is anybody else here to be heard we will hear them, and if not, the committee will stand adjourned.

Mr. SPELLING. Will it be taken up on the 18th?

The CHAIRMAN. Yes, sir. The committee will stand adjourned.

(Thereupon, at 1.10 o'clock p. m., the committee adjourned.)

STATEMENT OF MR. LOUIS A. STERNE.

Mr. STERNE. Mr. Furuseth stated that in view of the fact that he had talked with Mr. Turner, this letter was addressed to him. This reads as follows:

THE NEW WILLARD,
Washington, D. C., April 7, 1906.

MY DEAR FURUSETH: I am called home to the coast suddenly, and inclose herewith the letter promised. I have not had time to elaborate it as I told you I would do. With best wishes.

Sincerely, yours,

GEORGE TURNER.

The letter referred to, which was inclosed, is as follows:

THE NEW WILLARD.

Washington, D. C., April 7, 1906.

ANDREW FURUSETH, Esq., *Washington, D. C.*

DEAR SIR: I am not prepared to express an opinion concerning the policy of the proposed law to which you have called my attention, but I have no hesitation in repeating the opinion, expressed to you verbally, that the courts of the United States, as at present constituted and empowered, have no authority to issue injunctions or restraining orders in controversies growing out of labor disputes, except in cases where interference with some actual physical property or property right of one side or the other has taken place or is threatened. Injury to property, either actual or prospective, is the foundation on which the jurisdiction of courts of equity rests.

It is beyond the power of such courts to attempt to enjoin strikes or to control labor organizations in their efforts to make labor strikes effective, so long as such efforts do not go to the destruction or injury of property. Men must have liberty in this country to work or not as they please and to use lawful means to induce others to refrain from working if it is to their interest to do so. This liberty is matter of constitutional right and can not lawfully be interfered with by any form of legal procedure. But, unfortunately, in their efforts to make strikes effective, men sometimes go further than the employment of lawful means, and it becomes important in such cases to determine what the remedies are provided by law for such excesses.

In such cases the criminal law may punish and the civil law give compensation in damages for injuries inflicted, but when the injured party goes into a court of equity the question of the right of such a court to proceed is still to be answered by the test I have suggested, namely, Does the wrongful act complained of do injury to some property or property right? In this sense an employer has no property or property right in the labor which he employs, and he has no right to come into a court of equity to invoke its jurisdiction simply because he has been deprived of such labor through the efforts of third persons. Undoubtedly if those efforts constitute breaches of the criminal law, the guilty parties may be punished, but equity does not interfere because acts are criminal.

Undoubtedly if those efforts are unlawful and result in injury, the injured party may have damages in a civil action, but equity does not interfere in every case where the common law gives a remedy in damages. Equity only interferes where, by the course of its established procedure, it is proper for it to interfere, and it has been established by the wisdom of the great men who have presided in courts of equity since their foundation that it is not proper to interfere with the personal conduct of individuals except where that conduct affects property or property rights.

These principles are laid down in the text-books and are illustrated by the decisions of the courts. The cases of *In re Sawyer* (124 U. S., 200) and *Northern Pacific Railroad v. Whalen* (149 U. S., 157) well illustrate them. *In re Debs* (158 U. S., 564) does not depart from those principles. In that case there was actual interference with physical property, actual injury and destruction of property, which property constituted an interstate highway, thus constituting a nuisance which the United States, as the sovereign, had the right under a well-recognized head of equity, to apply to the courts to abate and enjoin.

There is no denying, however, that a number of the inferior courts of the United States have departed from these principles in dealing with labor troubles, and in doing so have set some bad precedents. Their action is an illustration of the old adage that "hard cases make bad law," and is a strong argument against any legislation which might be construed as a recognition of such a practice.

Very truly, yours,

GEORGE TURNER.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, April 18, 1906.

The committee met at 10.40 o'clock a. m., Hon. John J. Jenkins in the chair.

ARGUMENT OF T. C. SPELLING, ESQ.—Continued.

Mr. SPELLING. Mr. Chairman and gentlemen, in closing the other day I remarked that no attack had been made upon the constitutionality of this bill, and so, as there has not been such an attack, it may not be necessary to touch upon that.

Mr. LITTLEFIELD. To which bill do you refer, Mr. Spelling?

Mr. SPELLING. The bill that has been introduced—H. R. 18171.

Mr. LITTLEFIELD. That is the bill that Mr. Spelling himself proposes, is it?

Mr. SPELLING. That is the bill introduced by Mr. Pearre, a member of the committee, by request.

Mr. LITTLEFIELD. Is this the one drawn by you?

Mr. SPELLING. Yes.

I am not going to detain you more than ten or fifteen minutes. I am going to read something from a manuscript here on the constitutional question, giving you a few authorities; but first I wish to propose a few amendments to this bill. I will not argue them, and I would be obliged if some member of the committee would propose those amendments as I offer them. Of course nobody is committed to anything. He does that tentatively; that is understood. In the first place, strike out after the word "employment," line 11, down to and including the word "granting," in line 3, page 2.

Also strike out in line 10, page 2, the word "mere." In line 25, page 2, between the words "the" and "carrying," insert "entering into or." In line 3, page 3, between the same words insert those same words "entering into or."

In line 4, page 3, strike out the word "when." In line 5, page 3, strike out the word "done" after the word "would." In line 5 insert "if done or not done"——

Mr. ALEXANDER. How would it read then—"would, if done?"

Mr. SPELLING. Just that part, you mean?

Mr. ALEXANDER. Yes; in line 5, page 3.

Mr. SPELLING. Beginning with line 4 "agreement be restrained or enjoined unless such act or thing would if done or not done be of the character described in the first section of this act."

I will say, in regard to the first amendment, that we do not care to mix up the issues. We think that the judge ought to have discretion to require notice or not to require it. It is too important a matter for us to impinge upon in this matter.

Mr. LITTLEFIELD. To do what?

Mr. SPELLING. We do not care to interfere with this matter of notice. Our main contention is something else—that is, to lop off this excess jurisdiction.

Mr. LITTLEFIELD. That is the fundamental basis of the Gilbert bill—notice. So your proposition is that the Gilbert bill in no instance is supported by the people you represent—that is, you absolutely disavow that?

Mr. SPELLING. We do, absolutely.

Mr. LITTLEFIELD. Is this bill the bill that the American Federation of Labor supports?

Mr. SPELLING. Yes, sir.

Mr. LITTLEFIELD. Do we understand that the train men and the locomotive engineers have abandoned the support of the Gilbert bill?

Mr. SPELLING. No, sir; you do not understand that from me. We find we will have to make our own fight on those matters.

Mr. LITTLEFIELD. So in that respect the Federation is not a unit?

Mr. SPELLING. We are not fighting the railroad employees unless it is necessary.

Mr. ALEXANDER. Just whom do you represent?

Mr. SPELLING. The American Federation of Labor.

Mr. LITTLEFIELD. They are not a unit in that organization, because Mr. Fuller's organization stands, as I understand it, as a unit for the Gilbert bill?

Mr. SPELLING. They do not belong to the American Federation of Labor.

Mr. LITTLEFIELD. Are not your organizations federated with the American Federation of Labor?

Mr. FULLER. No, sir.

Mr. LITTLEFIELD. Oh, I thought they were. I misunderstood that.

Mr. SPELLING. I think it is proper and better, and I would like to have some member of the committee to suggest those amendments in order to get them in proper form on the record.

Mr. LITTLEFIELD. We understand this bill was introduced by Mr. Pearre on request, but that it will not meet your views unless these amendments are put on?

Mr. SPELLING. Yes; that is right; and I think we will be able to get the bill introduced as amended.

Gentlemen, to save time, I will read about this constitutional matter. Before I read, however, there may be a question as to whether this is class legislation. I am not going to argue that, because I do not really think it is necessary. Congress legislated about employment between shipowners and sailors, it has legislated about patents and made a special method of procedure in patent cases, and in various other cases. I suppose under a State constitution which was specific on such subjects that this might be considered class legislation, and I think that relates more to matters of taxation.

Mr. LITTLEFIELD. Let me get your point. Under the provision of the fourteenth amendment of the Constitution, first section, which provides that no State shall pass a law depriving people of the equal protection of the laws, if I get your position right now, if that provision of the Constitution applied to the Congress as well as to the State, this bill would be unconstitutional. That is your proposition?

Mr. SPELLING. No; it is not exactly, I think—

Mr. LITTLEFIELD. If that is not your position, I would like to have you explain your view.

Mr. SPELLING. I do not think this deprives anyone of the equal protection of the laws.

Mr. LITTLEFIELD. Are you familiar with the Michigan case or the Illinois case where they passed legislation which exempted farmers and other men from the operation of a law, which is exactly this proposition here. That is, this applies to a certain class of people.

Mr. SPELLING. I am not acquainted with those cases, but I am acquainted with a number of cases along that line, and I will probably have an opportunity to take up your suggestions, and I think probably others will be heard further on that, and I will probably have a chance to reply later.

But the constitutionality of such legislation has been and may be again questioned upon the ground that Congress has no power to forbid the issuance of injunctions. Now, that suggestion opens up a field of discussion which I do not deem it necessary to fully explore. I shall merely point out some of the landmarks and cite some of the most relevant and authoritative utterances of judges and others.

This power has been exercised by Congress upon five subjects—

Mr. LITTLEFIELD. What is your position there—that Congress has no power?

Mr. SPELLING. That the bill is not unconstitutional in that it forbids—that is, it has the form or seeks to limit and curtail the power of courts to issue injunctions; do you understand?

Mr. LITTLEFIELD. Well, I do not get that quite as clear, perhaps, as you have it in your mind.

Mr. SPELLING. In other words, placing the same idea in affirmative form—

Mr. LITTLEFIELD. The proposition you now have in your mind is the same proposition our distinguished friends are discussing in the Senate?

Mr. SPELLING. I am not prepared to admit that. In the first place, I do not think it is; in the second place, I do not clearly understand what is going on there; and in the third place, I do not think it is material, if you will permit me to answer in that form.

Mr. LITTLEFIELD. Let me get your proposition that you are discussing.

Mr. SPELLING. All right; I will state it in affirmative form. It is this: That Congress has the power to limit the power of the courts in the issuance of restraining orders and injunctions.

Mr. LITTLEFIELD. That is what Senator Bailey claims exactly.

Mr. SPELLING. Well, I do not know about that. I will read. Perhaps I will run across something that will throw a little light on that.

Mr. LITTLEFIELD. Before you read may I inquire to see whether you have it in your brief or not? As I understand, the reason why some gentlemen oppose the Gilbert bill that Mr. Fuller supports is because it inferentially recognizes the existence of a power in the courts that the courts do not now possess. Do I get that right, Mr. Fuller?

Mr. FULLER. I would prefer that the question be asked me when I have an opportunity to reply at length.

Mr. LITTLEFIELD. I was going to ask you, Mr. Spelling, whether you discuss that question later on in your brief?

Mr. SPELLING. No; and I will discuss it now briefly. We consider this matter of notice, in the first place, a matter that ought to be given the most serious consideration, because when a man is entitled to an injunction he ought to have it forthwith. We do not want to have anything that is unjust and harsh, calculated to have serious results in practice, and we believe that that matter, whether there shall be notice or not, ought to be left to the discretion of the courts. If a man is about to go and cut down another's shade trees, believing it his

land, it would be folly to give him five days' notice that the true owner was going to apply for an injunction. And besides that, that is a mere matter of procedure.

The legislation that we ask relates to matters of far-reaching consequence and substance, a matter of great public importance. The Federation of Labor, a body in favor of this legislation, objects to having any mere plasters. We don't want palliatives. We don't want to have the issue we have made before this Congress complicated by those small matters, important though they might be at some future day. We know the tendency of legislative bodies. Interests go to the legislatures and demand what they think they are entitled to. The Congress, or whatever the body is, passes a makeshift, and then you can never get that Congress interested in the proposition that that interest has presented, especially if that interest be a labor interest.

Now, gentlemen, I do not care to go further into that. That is the reason we want this matter about notice out of this bill.

To go on with my argument as I have prepared it, this power has been exercised by Congress upon five subjects, covering a period reaching from 1793 down to a comparatively recent date.

Section 3224 Revised Statutes prohibits the maintenance of any suit to restrain the collection of taxes. (See *Pullan v. Kinsinger*, 2 Abb. U. S., 94.)

Section 720 Revised Statutes prohibits injunction against prosecution of actions in State courts except in bankruptcy proceedings. (See *Diggs v. Wolcott*, 4 Cr., 179; *Peck v. Jenness*, 7 How., 625; *Watson v. Jones*, 13 Wall., 719; *Haines v. Carpenter*, 91 U. S., 254; *Watson v. Bondurant*, 21 Wall., 166.)

Section 5024 Revised Statutes confers a power to grant injunctions in involuntary bankruptcy cases which courts of equity did not possess according to course of the common law. That is to say, to prevent transfer of personal property.

Section 5237 Revised Statutes confers power at suit of national banks in certain cases to grant injunctions against the Comptroller of the Currency—a new and unusual jurisdiction.

Section 5242 Revised Statutes prohibits the granting of injunctions against national banks after a certain stage in bankruptcy proceedings.

The validity of an act of Congress prohibiting the issuance of an injunction was expressly recognized in *Diggs v. Wolcott*, 4 Cranch, 179. The decree of the circuit court had enjoined the defendant from proceeding in a suit pending in a State court. The Supreme Court reversed the decree on the ground that the circuit court had no jurisdiction. The correctness of the decision is recognized in *Peck v. Jenness*, 7 Howard, 612, 624.

The act of Congress is not mentioned in the decision, but the reference to it in 7 Howard, 724, shows that the decision was based upon the act of Congress of March 2, 1793, chapter 66, section 5, now section 720, Revised Statutes.

These statutes have been given effect without comment in cases almost innumerable; and at other times they were noticed and construed. This power of Congress has never been disputed or even doubted until the present debate going on in the Senate on the rate

bill. It would be a stupendous task to follow that great discussion, but I would be surprised if any competent lawyer were to compare the arguments of Mr. Bailey with those of Senators Spooner and Knox and not then admit both reason and authority to preponderate overwhelmingly in favor of the contention that Congress can at least take away the preventive remedy where no confiscation of property is involved.

Mr. LITTLEFIELD. It seems you are more or less familiar with the controversy there.

Mr. SPELLING. Yes, sir.

Mr. LITTLEFIELD. I thought possibly you might be, although I inferred from your answer to my question a few moments ago that you were not. We will get the benefit of your judgment on that.

Mr. SPELLING. I am not acquainted with all the issues involved in that debate. I took some notice of this; I did not go to the bottom of it, but I read those speeches.

I will repeat, because I am inclined to think it is a good thing to repeat, that it would be a stupendous task to follow that great discussion, but I would be surprised if any competent lawyer were to compare the arguments of Mr. Bailey with those of Senators Spooner and Knox and not then admit both reason and authority to preponderate overwhelmingly in favor of the contention that Congress can at least take away the preventive remedy where no confiscation of property is involved.

Now, inasmuch as my friend over there, Mr. Littlefield, I believe—

Mr. LITTLEFIELD. Yes; that is my name.

Mr. SPELLING (continuing). Has made the suggestion that he has, I wish to say that supposing Congress has the power of legislation forbidding the granting of an injunction against suspending the rate, against the power of the court to suspend the rate, a question might arise upon a case involving a confiscation, which would render that legislation unconstitutional, as applied to that case—that is, it would be unconstitutional as a matter of construction and application. Suppose the Commission fixes a rate that is confiscatory, and this legislation is passed forbidding the granting of those injunctions?

Mr. LITTLEFIELD. Preliminary injunctions?

Mr. SPELLING. Yes, in broad terms; and a case comes up before a circuit court asking for an injunction on a complaint showing that the rate is absolutely confiscatory. I would be bound to admit that I do not believe that this act of Congress would stand in the way of an injunction in a case like that.

Mr. LITTLEFIELD. That is exactly Senator Knox's and Senator Spooner's contention.

Mr. SPELLING. That is part of it. I qualify here—

Mr. LITTLEFIELD. I am glad to get your judgment on that.

Mr. SPELLING. I say that Congress has this power where it does not involve any question of the confiscation of property.

Mr. LITTLEFIELD. Your proposition here is not necessarily parallel with that, because that element is lacking.

Mr. SPELLING. I make that distinction, and I think it is very properly made.

It is not necessary for me to go further than this in support of this bill—that is, this bill we propose here. Conceding what I consider an untenable contention, that there is some such thing as property right to carry on a business, which is no more nor less than saying that one may have a property interest in labor—conceding also that such interests can be destroyed, in whole or in part, by any act not amounting to a deterioration of the corpus of such property, or a divestiture of the title, or a dispossession—still there is here no question of confiscation or of appropriation to public use or deprivation without due process of law.

Now I will refer to some of the cases which I think place the constitutionality of this bill beyond doubt. I am speaking now with reference to the power of Congress over the issuance of injunctions and of its power to prohibit the issuance. I should say that lack of time prevented me from verifying all these cases. I took some of the quotations on trust from the argument of Senator Bailey on last Friday.

In the first place he supports his contention that judicial power and jurisdiction are synonymous by citing and quoting from several authorities. Some of them are: Bailey (an English author), on *The Jurisdiction of the Courts*, who defines jurisdiction to be “the power to hear and determine the subject-matter in controversies between parties to a suit, and to adjudicate or exercise any judicial power over them.”

Bracton defines jurisdiction to be the authority to judge or to declare the law between parties brought into the courts. As was said by Chief Justice Ryan in *re Pierce* (44 Wis. Rep., —), “This definition by Bracton is of universal authority and has never been improved upon. Bouvier’s definition conforms in substance to Bracton’s. In fact the sense is exactly the same.”

Senator Bailey read extracts from the following decisions in which the terms “judicial power” and “jurisdiction” were used synonymously:

Ex parte Crane, 5 Peters (30 U. S. Rep., 202); *Turner v. Bank of North America*, 4 Dallas. —; *McClung v. Silliman*, 6 Wheaton, —; *Cary v. Curtis*, 3 Howard, 245; *United States v. Union Pacific Railroad Company*, 98 U. S., 601–2.

These are not all, but inasmuch as no distinction has ever been attempted until Senators Knox and Spooner have undertaken to point one out, I am willing to rest on these.

Upon the important point that Congress has complete legislative control of jurisdiction of the courts inferior to the Supreme Court, power to grant it, take it away, and forbid its exercise, he cites from so many and such high authorities that it can no more be disputed than that Congress has power to grant or withhold charters from national banks. I will read a few of the extracts. Justice Miller, after an illustrious career on the Supreme Bench, wrote a work on the Constitution of the United States, in which he said, at page 335:

Therefore it was that immediately upon the organization of the Government Congress did create courts, define their constitution, and regulate their administration. It is, however, a noteworthy fact that up to within a very few years a large body of this judicial power which is within the control of Congress, under these provisions of the Constitution, was vested in no court at all, and consequently could not be exercised by a Federal court.

In *Cary v. Curtis* (3 How., 245), the court said:

Secondly, in the doctrines so often ruled in this court, that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances applicable exclusively to this court) dependent for its distribution and organization and for the modes of its exercise entirely upon the action of Congress, who possesses the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction, either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. * * * Perfectly consistent with such an admission is the truth that the organization of the judicial power, the definition and distribution of the subjects of jurisdiction in the Federal tribunals, and the modes of their action and authority have been, and of right must be, the work of the legislature. The existence of the judicial act itself, with its several supplements, furnishes proof unanswerable on this point.

In *Turner v. Bank of North America* (4 Dall.) the court said:

The notion has frequently been entertained that the Federal courts derive their judicial power immediately from the Constitution, but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal.

And in *Sheldon v. Sill* (8 How.):

It must be admitted that if the Constitution had ordained and established the inferior courts, and distributed to them their respective powers, they could not be restricted or divested by Congress. But as it has made no such distribution, one of two consequences must result—either that each inferior court created by Congress must exercise all the judicial powers not given to the Supreme Court, or that Congress, having the power to establish the courts, must define their respective jurisdictions.

The first of these inferences has never been asserted and could not be defended with any show of reason, and if not the latter would seem to follow as a necessary consequence. And it would seem to follow, also, that, having a right to prescribe, Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies. Courts created by statute can have no jurisdiction but such as the statute confers. The Constitution has defined the limits of the judicial power of the United States, but has not prescribed how much of it shall be exercised by the circuit courts. Consequently the statute which does prescribe the limits of their jurisdiction can not be in conflict with the Constitution unless it confers powers not enumerated therein. This judicial power, therefore, to take cognizance of this case, is, by the Constitution, vested in the circuit court, and the plaintiff claims the constitutional right to have his controversy with Mr. Sheldon, living in Michigan, decided by that court. Congress has said, by the provision above referred to, that there are certain controversies between citizens of different States which the United States courts shall not take cognizance of; yet the judicial power of the court extends to them by the Constitution, and citizens of the different States have the right to have that power exercised in their controversies. Where does Congress get the power or authority to deprive the courts of the United States of the judicial power with which the Constitution has invested them? Congress may create the courts, but they are clothed with their powers by the Constitution, and we submit that the provision of the act of Congress materially conflicts with the provisions of the Constitution and is void.

Now, the power to forbid or prohibit is the equivalent of the power to repeal. And the power to repeal is coordinate with the power to enact. If this were not so one Congress might exercise all the power granted in the Constitution and it would be useless and idle for Congress to ever meet again. That would be, I think, a *reductio ad absurdum*. Our system of legislation would be, though not written in blood, yet irrevocable, like the Draconian Code.

But we have a case exactly to the point that, though a jurisdiction has been vested in the circuit court, it may be subsequently taken away by an act of Congress. I refer to the case of the *Assessors v. Osborne* (9 Wallace Rep., 567, 575), where the court said:

Circuit courts are courts of special jurisdiction, and therefore they can not take jurisdiction of any case, either civil or criminal, where they are not authorized by an act of Congress. Jurisdiction in such cases was conferred by an act of Congress, and when that act of Congress was repealed the power to exercise its jurisdiction was withdrawn, and inasmuch as the repealing act contained no saving clause, all pending actions fell, as the jurisdiction depended entirely upon the act of Congress.

No words of mine could add anything to the force and conclusiveness of this decision. My whole argument from beginning to end is concentrated and given judicial approval in this quotation.

See also *Ex parte Robinson* (19 Wall., 505, 510).

Mr. DE ARMOND. I would like to ask about this distinction you make with reference to Senator Bailey's contention. As I understand it, his contention is that these inferior Federal courts have no jurisdiction or no judicial power except that which Congress confers upon them. I don't know what your position is with reference to that proposition and I don't care to ask—

Mr. SPELLING. Well, I don't think we ought to go into a general debate, but I will say this, that my position is this: That many acts of legislation are constitutional *pro forma* and in the absence of coming in conflict with some other legislation which is of superior authority and force.

While Congress has the power to limit the jurisdiction of the inferior Federal courts, yet there has been another legislative power, the constitutional convention, which enacted some legislation, and among that legislation was a provision which does not have anything to do with the jurisdiction of the courts. It is this: I do not state it literally, but it is to the effect that no person shall be deprived of property without due process of law, and if a case comes up in which a person is about to be deprived of property and Congress has in that particular kind of a case completely closed the doors of the courts, I think that then a court would hold that the acts limiting or taking away the jurisdiction as applied to that case would be unconstitutional, would not stand in the way of this person or this corporation getting an injunction to restrain the enforcement of a confiscatory rate.

Mr. DE ARMOND. That is the point I was going to try to get at. Does it follow from your premises that an injunction is necessary for the protection of that right and the prevention of that confiscation, or is not that the assumption?

Mr. SPELLING. I do not know any other remedy that is adequate in the case of confiscation of property.

Mr. DE ARMOND. The question of confiscation according to your theory depends upon the judgment of the court applied to whether it is or is not confiscation, does it not?

Mr. SPELLING. The injunctions are issued upon the showing made by the applicant.

Mr. DE ARMOND. The judgment of the court on that showing?

Mr. SPELLING. And the court would have the facts before him. They always must do that.

Mr. DE ARMOND. I can not see how those two propositions hang together. The first is that the court has no jurisdiction except what Congress gives it, and the next is that although that is true and although Congress has expressly withheld that power, yet when the court believes or assumes to believe that there is confiscation it can ignore the right of Congress and can exercise the power—the power they can not have without Congress at all.

Mr. SPELLING. There is no question that there is a distinction that courts and lawyers may draw between the inhibition of a preliminary injunction and the inhibition of a permanent final injunction. It might be said that they still would have the right to carry on the litigation to the ultimate result and get a permanent injunction. Now, the question is whether you can begin enforcing a confiscatory rate, whether it is not confiscation to require a carrier to carry on business when they do it at a loss.

Mr. DE ARMOND. Yes; but that is not the proposition. If Senator Bailey's contention is correct, and I believe it is, that the inferior courts have no power, no judicial power, no jurisdiction, except what Congress gives them; then how can one of those courts not having the power, that power not being given it, but expressly withheld, how can that court assume jurisdiction and do that thing, even granting that your other proposition may be correct, that somehow and somewhere it will be or may be done?

Mr. SPELLING. I think the courts would hold that the act was constitutional on its face, pro forma; but when a case like we are supposing will come before it the court will say, We can not construe the act as applying to this kind of a case, because that would be to construe it as unconstitutional, and we will construe it as if it was not the intention to destroy the efficacy of this constitutional provision.

Mr. GILLET. Suppose that Congress should pass an act that in no case at all a writ of injunction be issued for any purpose, and then suppose it should appear to the court having jurisdiction that property was about to be destroyed, and there was no speedy adequate remedy at all, could the court then, with the act of Congress staring it in the face, issue a writ of injunction or any other order which would prevent this irreparable injury?

Mr. SPELLING. It is a very serious question to throw even at an attorney to answer offhand; but I think I could find ample authority in the opinions of the Supreme Court for saying that Congress has the power to take away the jurisdiction of those courts.

Mr. PALMER. Do you not make any distinction between jurisdiction and judicial power?

Mr. SPELLING. No; I think the terms are used interchangeably to signify the same thing.

Mr. PALMER. If the court is hearing a different kind of a case, such as a case at law or a case at equity, do you not think it must have power to decide and enforce its judgment?

Mr. SPELLING. Well, I think there is in fact a common understanding, a nice distinction, between the judicial power and jurisdiction, but I do not believe that it is of any importance on this question.

Mr. PALMER. What do you think the framers of the Constitution when they said the judicial power should be vested in one supreme court—what did they mean by one judicial power?

Mr. SPELLING. I think they meant jurisdiction.

Mr. PALMER. Oh, you do? I don't.

Mr. SPELLING. But I think there is a sense in which we use the words judicial power that is outside the use of those terms in the Constitution and in acts of Congress.

Mr. PALMER. The framers of the Constitution used the words in their ordinary significance as understood by the plain people, and the words "judicial power" meant exactly the power that the courts were exercising at that time in England and in this country.

Mr. SPELLING. I think usually when the question arises whether the court has power—for instance, suppose the court issues an order citing a person for contempt; I want to get a supposable case now that has not been discussed. Suppose the court orders property to be taken into the hands of a receiver and it is a question of the construction of a statute governing receiverships or the appointment of receivers. Now, is not that a question of jurisdiction? What else can you make of it by the question of whether the court has jurisdiction to act and to thus act in making that particular order?

Mr. LITTLEFIELD. Does not jurisdiction ordinarily, in its ordinary legal signification, relate to cases and persons and parties and places within which the court exercises certain power?

Mr. SPELLING. Well, the word "case" has a very broad significance.

Mr. LITTLEFIELD. Not so very broad when you use it in a legal sense.

Mr. PALMER. Law and equity, that is all.

Mr. SPELLING. Is the word "case" used in the Constitution?

Mr. PALMER. Certainly.

Mr. LITTLEFIELD. Well, it may not be used in the Constitution, but it is used several million times in the law. Do you go so far as to say that you do not understand what I mean when I use the word "case" in a legal sense?

Mr. SPELLING. I will submit this.

Mr. LITTLEFIELD. Please answer that question first. When I put you a question and ask you about cases, don't you know what I mean by that word, in a legal sense, from a legal standpoint?

Mr. SPELLING. It has a broad significance; you might mean a contempt case.

Mr. LITTLEFIELD. The Constitution, section 2, Article III, says the judicial power shall extend to all cases in law and equity. There you find it once in the Constitution. You thought it was not in the Constitution, but it is in there once anyway.

Mr. SPELLING. It seems to me the use of it there has a tendency to limit the jurisdiction.

Mr. LITTLEFIELD. Precisely so; I meant a law case. Did you think I meant something outside of a law case?

Mr. SPELLING. Momentarily I had forgotten that the word was used there.

Mr. LITTLEFIELD. Apparently you had.

Mr. SPELLING. But if you go to a court to get an order shortening time, a question of jurisdiction might arise, and that might be called, and properly, too, a question of judicial power. It is just as much a question of jurisdiction as it is of power.

Mr. LITTLEFIELD. I would like to ask you a question that does not relate to that. At common law, in your judgment, is or is not the right to carry on business a property right?

Mr. SPELLING. No, sir; I don't think it is.

Mr. LITTLEFIELD. That is to say, the right that is absolutely essential to the preservation of the interests of probably every man engaged in business is not a property right?

Mr. SPELLING. I say the mere right—

Mr. LITTLEFIELD. I am not asking about the mere right, but that simple question whether the right to carry on business is a property right inherent in every man at common law.

Mr. SPELLING. I say it is not when it is divorced from the question of good will in a particular business.

Mr. LITTLEFIELD. Good will is involved in business, is it not?

Mr. SPELLING. Not necessarily.

Mr. LITTLEFIELD. Is the right to carry on business with the good will a property right? Is good will in business a property right?

Mr. SPELLING. The right to carry on business, behind the good will of the business—that would be two property rights.

Mr. LITTLEFIELD. What are they? First, the right to carry on business, and, second, the good will of the business?

Mr. SPELLING. I do not mean it is two property rights; I did not mean to say that. I mean it is a privilege connected with a property right.

Mr. LITTLEFIELD. Well, what is the property right? Is the good will the privilege or the business the privilege? Which is the privilege?

Mr. SPELLING. The good will.

Mr. LITTLEFIELD. That is the privilege, and that is connected with a property right. What is the property right, the right to carry on the business?

Mr. SPELLING. The good will is the property right, the right to carry on—

Mr. LITTLEFIELD. And the business—

Mr. SPELLING. The privilege—

Mr. LITTLEFIELD. So that the good will is the principal thing, and the right to carry on business is the incidental thing from your point of view.

Mr. SPELLING. There is not the relation between those of principal and agent or principal thing and incident.

Mr. LITTLEFIELD. Of course principal and agent do not have any relation to it at all.

Mr. SPELLING. There is no question of whether the one or the other is principal and the agent.

Mr. LITTLEFIELD. You can not have good will without business, can you? You can not predicate the idea of good will except upon a business?

Mr. SPELLING. Yes; you can.

Mr. LITTLEFIELD. Give us an illustration.

Mr. SPELLING. You can assign it; it can be devised to the administrators.

Mr. LITTLEFIELD. But you can not use the term "good will" unless you predicate it upon a business.

Mr. SPELLING. That is right.

Mr. LITTLEFIELD. It does not exist without a business, does it?

Mr. SPELLING. That is right; you can not use it effectively in

any way to make property out of it unless you connect—that is, you put a business behind it.

MR. LITTLEFIELD. Precisely so. So that if you have good will without a business you do not have any good will. In other words, you can not think the idea of good will without a business as a basis of it.

MR. SPELLING. I do not agree with you, because a man can have a business and sell his business out, and he may simply sell the good will—

MR. LITTLEFIELD. But if he had not had the business originally he would not have had any good will to sell, would he?

MR. SPELLING. Without seriously studying up the question, I am inclined to think that a good will of any value can not be created without engaging in business.

MR. LITTLEFIELD. Without having had time to look up the law, you would rather conclude that was a fact?

MR. SPELLING. Yes; that is my impression.

MR. LITTLEFIELD. That would seem to be obvious. The business and the good will together at least constitute a property right at common law.

MR. SPELLING. No; they do not. The good will is a property right; the business is a privilege incident to it.

MR. LITTLEFIELD. What is good will of a business from your definition?

MR. SPELLING. Good will is the right to use a name or a symbol.

MR. LITTLEFIELD. Let me call your attention to this fact: The right to use a name is a trade-mark.

MR. SPELLING. I understand that, too.

MR. LITTLEFIELD. So do I.

MR. SPELLING. I am speaking at common law. I understood you to start with the common law.

MR. LITTLEFIELD. I will ask you what good will is.

MR. SPELLING. I will try to answer. At common law the good will of a business might be a mere name or a street number. For instance, the fact that a person was doing business at a certain place, and had done business there a long time, might make a mere street number something of value, which would constitute good will.

MR. LITTLEFIELD. In which he would have a property right.

MR. SPELLING. Or it might be the name of the street, practically.

MR. LITTLEFIELD. In which he would have a property right?

MR. SPELLING. Or it might be the name of a street, practically.

MR. LITTLEFIELD. In that would he have a property right, from your conception of it?

MR. SPELLING. Yes; whatever it was that constituted the good will would be the property right.

MR. LITTLEFIELD. This bill you present here wipes that property right out, under certain conditions, without any compensation or protection of law?

MR. SPELLING. I deny that proposition.

MR. LITTLEFIELD. Let me hear what you say. No right to continue the relation of employer and employee, or to assume or create such relations with any particular person or persons, or at all, or carry on business of any particular kind or at any particular place. That

is just what you have based your good will on just now. Or the right to carry on business of any particular kind or at any particular place, or at all. So you wipe out the whole business?

Mr. SPELLING. Yes.

Mr. LITTLEFIELD. Any particular place of business?

Mr. SPELLING. Yes.

Mr. LITTLEFIELD. Where do you provide any compensation?

Mr. SPELLING. I will tell you.

Mr. LITTLEFIELD. That is, the same man can not have any right to conduct business?

Mr. SPELLING. In case of a labor controversy a person is supposed to look all around about him and see what relations do exist between people and what relations are specified in the proposed act of Congress. I suppose you will not deny that. Now, then, there is no question of injury to the good will of business that can arise between employees and their employers in their relations. The only question that arises in reference to the good will of a business or a trade-mark is a question of infringement, and that has nothing to do with the labor dispute; it can have nothing to do with the relations between employers and employees.

Mr. LITTLEFIELD. How would it work for you to amend these bills so as to cover these very suggestions you have covered in your statement and then see what your bill would be worth—that is, what the bill would be worth in these particulars? That is to say, you propose to have here, by depriving the court of the right to protect the right to engage in business, you propose to deprive people of the right to continue in business with a good will, because I assume that if Jones has a business with a good will that it is his good will just as much as it is Smith's good will, the good will of the man who buys him out or the man that Jones proposes to sell to. Now, you propose to deprive the court of the right to protect that property right in Jones, and I do not see where you give Jones any compensation for the denial of his right to continue in business with his good will, which he has a right to sell, and which has a value in the market. If you have a place in your remarks where you are going to show that, I would like you to show it.

Mr. SPELLING. I think, with all due respect, that you assume without warrant that there is some essential connection between the good will that one may possess and the business that he carries on.

Mr. LITTLEFIELD. I was trying to quote your language, but I had hard luck, perhaps, in doing it. I understood you to admit—of course, I do not wish you to make any admission, and I am not asking you to make any admissions, according to my views. I have not intimated any views, and I have not even said yet that I thought the bill was right or whether Senator Spooner and Senator Knox are right. I have not read the whole of Senator Bailey's speech, and I am not intimating any belief one way or the other upon any of these propositions; but I understood you to admit that at common law the right to do business accompanied with good will is a property right.

Now, I do not want to misstate it. I did not understand you to say that the right to do business of itself was a property right. I do not say that I agree with you on that proposition, because I have always had a notion that the right to do business was fairly an inher-

ent and inalienable right; but assuming that the right to do business is not a property right, I understood you that when you took good will into account it was necessarily predicated on the right to do business either in the aggregate or separate, under those circumstances; either with the right to do business or with the good will a property right existed. I do not want to misstate your position, but I so understood you.

Mr. SPELLING. A property right in the good name or good will does exist; but the fact that a business is followed in connection with a trade name or—

Mr. LITTLEFIELD. Good will does not mean name. It means customers. It means business. Don't you agree with me on that, Mr. Spelling?

Mr. SPELLING. What is that?

Mr. LITTLEFIELD. Do you not agree with me that good will does not simply mean the name of the firm, but that it means the customers, it means the business the firm has built up? That is, a lawyer's good will consists of the business he has with his clients; if it is a doctor, it is the business he has with his patients; it does not mean simply his office.

Mr. SPELLING. I do not agree that any right or favor among customers constitutes a property right.

Mr. LITTLEFIELD. Is not that good will? Is there any other definition known to the law as good will except the customers a man has built up; that is to say the business he has built up, the right to sell and the right to hold his customers? Do you mean to say that if a lawyer sells his business to another lawyer and sells his good will, that that lawyer first mentioned can continue to go along with the clients he had at the time he sold his business and his good will?

Mr. SPELLING. You put too many questions at once. I want to get back to the part that is material. This matter of having a business built up, and having the confidence of people and having a whole lot of customers, which makes a good will valuable, is something intangible; it is like the privilege of walking on the street; it is valuable, but yet there is no commercial value; it is not a property right.

Mr. LITTLEFIELD. Is not a property right?

Mr. SPELLING. No, sir.

Mr. LITTLEFIELD. Now, is there any property right connected with the business or good will? You have already stated that there was, but if there is not any in the good will, and is not any in the business, how does that comport with your original proposition that there was a property right?

Mr. SPELLING. I was going to illustrate what I had said before you interrupted me. This intangible thing, or these intangible things that make a good name valuable are not of themselves of any value; it is a mere fiction by which the good will of a business is a property right, and can be transferred, but I say this, that there is no connection between the right to carry on business and the right to use a good name which warrants us in using that connectedly in considering this bill.

Mr. LITTLEFIELD. May I read you just a moment what some gentleman has said some years ago? Lord Eldon, in 17 Ves., page 335, says:

The good will is nothing more than the probability that the old customers will resort to the old place.

Vice Chancellor Wood said that was too narrow, and that it meant every advantage that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on or with the name of the late firm or with any other matter carrying with it the benefit of the late business.

Here is what Bouvier says:

Good will. The benefit which arises from the establishment of particular trades or occupations. The advantages or benefit which is acquired by an establishment on the mere value of the capital, stocks, funds, or property employed therein, in consequence of the general public patronage which it receives from constant or habitual customers on account of its local position or common celebrity or reputation for skill or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.

And there are other definitions, from Story on Partnership and other authorities.

There is your good will. Is not that a property right?

Mr. SPELLING. All those things taken together constitute good will.

Mr. LITTLEFIELD. Are they a property right or not?

Mr. SPELLING. They constitute a property right; that is, they tend to constitute good will.

Mr. LITTLEFIELD. Oh, they simply tend to constitute good will, these things do?

Mr. SPELLING. I say they tend to constitute it.

Mr. LITTLEFIELD. How can a man acquire this property right or good will without engaging in business, and if you can deprive him of the right to engage in business—

Mr. SPELLING. I will tell you one thing—

Mr. LITTLEFIELD. Unless he purchased it from somebody; but if you deprive him of the right to engage in business, how can he acquire what other people can acquire, and that is the good will of that business?

Mr. SPELLING. But suppose you disbar an attorney, how is he going to acquire a good reputation?

Mr. LITTLEFIELD. That is a fortunate suggestion. These people are going to be in the same position that a vicious attorney is in, one who has been disbarred, sort of an exile, sort of an Ishmaelite.

Mr. SPELLING. With due respect, I do not think your questions are exactly fair.

Mr. LITTLEFIELD. I do not think your illustrations come within a hundred rods of the proposition, if you want me to make a suggestion, which I have not done up to this time.

Mr. SPELLING (continuing). Because I do not think they are pertinent. I discussed this at some length the other day, and I was not expecting that it would come up this morning. If I have any further opportunity, I will have looked into this a little further.

Mr. LITTLEFIELD. Personally I am much obliged to you for your very candid and comprehensive statement.

Mr. SPELLING. I return the compliment by saying that although you may be opposed to the proposition it is gratifying to find members of the committee who take an interest in it and are willing to listen to the propositions advanced.

Mr. LITTLEFIELD. I have not said that I am opposed to it.

The CHAIRMAN. It has been suggested that we go into executive session.

Mr. DAVENPORT. I would like to ask the gentleman one question before we take a recess.

The CHAIRMAN. That is apt to develop into a discussion, probably.

Mr. SPELLING. If Mr. Davenport will ask his question now, I may be able to answer it after recess.

Mr. DAVENPORT. Assuming, for the sake of argument, that that which you state here shall not be considered as a property right by the laws of every State in the Union, is it not your contention that the Congress of the United States can declare that it is not property? For instance, take the State of Pennsylvania. Here is a recent decision: The right of a workman to freely use his hands, and to use them for just whom he pleases, and on just such terms as he pleases, is his property; and so, in no less degree, is the man's business in which he has invested his capital. The right of each, employer and employee is an absolute one, inherent and indefeasible, of which neither can be deprived, not even by the legislature itself. I understand your position that it is not property, but assuming the fact to be that the courts of every State of the Union have held as I have stated, do you contend it is in the power of Congress to declare that a certain thing is not property which by the laws of the State is property?

Mr. SPELLING. Mr. Chairman, I suggest that that one question, without waiting for the others, invites a very long discussion, and I do not think that the committee wants to wait until I get through with it.

Mr. DAVENPORT. One other question.

Mr. SPELLING. I suggest the gentleman submit his question in writing.

Mr. DAVENPORT. Just one other question.

The CHAIRMAN. The gentleman declines to answer them now, and we have not time to have any further discussion at this time. Without objection, the committee will now go into executive session.

(Thereupon, at 11.45, the committee went into executive session, at the conclusion of which it took a recess until 2 o'clock p. m.)

AFTERNOON SESSION.

ARGUMENT OF MR. T. C. SPELLING—Continued.

Mr. SPELLING. Mr. Chairman, I want to give a moment's notice to a question that was foreign to this matter, but it was thrust before the committee by a member of the committee this morning, and of course I do not consider my opinion as of any particular value; but I like to be consistent, and I would like to have half a minute. It is on that question of the injunction, in the Bailey amendment in the Senate. I simply wish to be understood. What I now propose to say is included in what I said this morning. This is a matter of detail.

My position is that there is nothing in the Bailey amendment which takes away or attempts to take away the jurisdiction of the court to issue an injunction against a confiscatory rate; that the Commission is empowered by that legislation to make a justly compensatory, or a just, reasonable, and remunerative rate, or whatever it is, and that no one can assume that the Commission will make a confiscatory rate.

Therefore, when it does assume to make a confiscatory rate it is absolutely void, that the Commission has not acted as a commission, it has under color of its office done a vain and void thing; that is, it has made a void order beyond its jurisdiction, that if a case come before the court, some carrier files a complaint claiming that a void order of that Commission, an attempt to fix a confiscatory rate, is being enforced, that the injunctive order is issued against the acts of those individuals for attempting to do something under color of office which has no warrant in law, nor under any real official act of that Commission, and that therefore the terms of the rate bill—that is, if passed, including the Bailey amendment—do not come before the court in considering that application. In other words, that while the Bailey amendment takes away the jurisdiction to restrain a rate made by the Commission, it does not take away or affect the jurisdiction of the court to restrain acts of individuals acting outside of and beyond the Commission in attempting to take property on the pretext that they have official authority, when they are only pretending to have the color of office or to be acting by virtue of official authority. That is all I wish to say about that.

I have had transcribed by the reporter a long question which was propounded me by Mr. Davenport, and I am not going to take up a very long time in answering it—although of course, I do not mean that as a pretense that I am qualified to answer long questions in short order. I do not think, however, that much time is needed in this case.

I will read the question and answer it. It is really a complication of argument, question, statement, and supposition.

Assuming for the sake of argument that by the laws of every State in the Union that which you state here shall not be considered as a property right is a property right, is it your contention that the Congress of the United States can declare that it is not property?

I do not think the question is relevant, because the proposed bill simply says that a certain thing shall not be considered or treated as property for the purpose of this act. Well, he illustrates.

“For instance,” says Mr. Davenport, “take the case of Pennsylvania. Here is a recent decision. The right of the workman to freely use his hands and to use them for just whom he pleases and on just such terms as he pleases is his property, and so in no less degree the man’s business in which he has invested his capital.”

Now, take the proposition that the workman’s right to use his hands and to use them for just whom he pleases and on such terms as he pleases is his property. I don’t like to say that anything that comes from a prominent attorney is absurd, but this proposition can be judged by its own words. There are a great many things that we enjoy that are very valuable—that is, their value is immeasurable—that are not property. The ability of a workman to labor is personal, purely. I have the valuable privilege of standing here and addressing this committee, which may be considered more or less valuable, according to circumstances; but is it property? It is simply a privilege.

Mr. DAVENPORT. The point of my question was, if, by the laws of the States, that is property, is it your claim that Congress, under the powers vested in it by the Constitution, can declare that that is

not property, not whether, in your opinion, the courts of those States are right in holding that by the laws of those States it is property; but, assuming that they have so decided and that is the law of the States, is it your contention that Congress can say that it is not property?

Mr. SPELLING. I will get around to that when I get through with this. I was just in the middle of a sentence. I think that all the dictionaries and all the languages would have to be made over in order to make property out of a man's right to use his hands to earn his living, or a lawyer's right to use his tongue to earn a living, or a ropedancer's right to go on the stage, or anything of that kind; or the voter's right to vote at an election, which stands in the same category. People earn money in various ways, and it would be better to bring those decisions that the gentleman refers to here before the committee, or at least bring quotations from them and state the facts before calling on me to discuss them.

It is not a fair assumption, answering now his interrogation there by way of interruption, that any State has decided that the right to do business is property. It is not a final settlement of the matter even if one State has done it. And the question whether this act of Congress would be conclusive on the Federal courts for the purposes of this bill as provided in the bill is not involved in that question that the gentleman has propounded. Therefore I adhere to my first answer. Then he proceeds:

The right of each employer and employee is an absolute one, inherent and indefeasible, of which neither can be deprived, not even by the legislature itself.

Well, that may be; it depends on what right he refers to. The question is vague. But if he means the right of the laborer to earn a livelihood or of anyone's right to go into the business of selling dry goods and staying in it, or of having cigars and selling them, or of running a circus, or keeping a pawn shop, or betting on the races—although I believe that is not legal—if it depends on any of those rights that are legal, it may be inherent and indefeasible and still not be a property right—and still, I mean to say, not even within the power of the legislature to take it away. At any rate, it would not be affected by any of the provisions of this bill.

He proceeds thus:

I understand your position that it is not property, but assuming the fact to be that the courts of every State of the Union have so held, do you contend that it is within the power of Congress to hold that a certain thing is not property which by the laws of the State is property?

I think I have fully answered it, but I think Congress has power to say that the right to do business shall not be considered or treated as property for the purpose of this act. That involves, of course, a consideration of what the act is, and to that I have already devoted considerable attention.

Mr. BRANTLEY. I want to ask you one question about another matter, if you do not mind. There is another bill pending before this committee to prohibit the granting of an injunction in any case without notice. Has your attention been called to that bill?

Mr. SPELLING. That is the Gilbert bill?

Mr. BRANTLEY. No; that is the Henry bill.

Mr. SPELLING. No; I have seen the bill, and I discussed that this morning. I will state for your benefit that we are opposed to any such legislation.

I wish to say that I do not want to be considered as deciding after investigation and mature consideration upon this rate matter. Of course I do not think it is necessary to say anything more about that, but that is my present view.

**STATEMENT OF ROBERT C. BEATTY, 43 CEDAR STREET,
NEW YORK.**

Mr. BEATTY. I represent, Mr. Chairman and gentlemen, the United Typothetæ of America and the typothetæ of the city of New York. They are the associations of employing printers. The United Typothetæ is an association with branches in most of the cities of this country, and branches in Canada—of local associations—typothetæ associations formed by the corporations, partnerships, and individuals engaged in the business of printing in this country and Canada.

In listening to Mr. Spelling's argument this morning there was an inconsistency that occurred to my mind on the face of this bill which has been last introduced (18171), which occurred to me as being perhaps the most serious question at the outset of its consideration. I wish to state that I oppose, on behalf of those organizations mentioned, all five of the bills before the committee in reference to the injunctions, contempt of court, and conspiracy questions.

For the purposes of this act, what has up to this time been under the well-considered decisions of all the courts determined to be property (and, of course, that it is a most valuable kind of property is conceded), is made no property. Where can the line be drawn? Would it not be within the power of Congress, if this act were to be accepted as a proper legislative exercise of power, to say that only unimproved real estate shall be property for the purposes of this act? Is there any logical distinction whatever that can be made when Congress begins to declare that which is property not to be property to serve ulterior purposes? It is apparent on the face of this argument here why this kind of property is singled out and declared no property. It is the kind of property that is most liable to destruction in labor troubles.

It is apparent that in no labor trouble can any unimproved real estate be destroyed. Therefore why should Congress not be asked to go further and declare that all kinds of personal property shall not be considered as property for the purposes of such an act as the present one, and go still further, so as to cover all property liable to damage in labor troubles, and say that no right to do business, no carrying on of business, no personal property, and no improved real estate shall be considered property for the purposes of such an act as the present one?

Does anyone question that such an act as last suggested would be unconstitutional? Can a person be deprived of his property without due process of law by any such subterfuge as this?

Should we not strip from a bill of this character the thin veil that is thrown over it and have it at least cast in language that is direct and means what everyone can read? That is to say, that no injunction which protects property most liable to injury in labor troubles

shall be issued by any court of the United States. Now, why should such class legislation be enacted by Congress? What is there sacred about a labor dispute which requires that courts shall not protect the property, and who is it that presents and stands back of this bill? Is it the nonunion employee who wants his right to do business protected? Is it the man who has embarked a large sum of capital making it possible for the employment of the union men? No; it is for the purpose apparently, and for the sole purpose, of permitting the club to be wielded over the employer with impunity.

The first part of this bill recites substantially the law as it is to-day. No injunction shall be granted unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law. Now, that is the simplest principle of equity jurisdiction. There is no reason why the bill should define such rights as they are clear on the books to-day. The whole purpose is the further clause to destroy the property characteristic of the most valuable property right which any of us has to-day.

The vast majority of people in this country are solely dependent on the property right in the right to do business. That is where the income comes from that supports the family, and that is the thing that can be most easily brushed away, and that is the thing which this bill aims to destroy.

It was thought that I would speak more from the practical side of the operation of these injunction bills, because I have been engaged in an injunction litigation on behalf of the Typothetæ of the City of New York in a city which is supposed to be law-abiding, at least as to the protection of individuals on its streets, and with a union which claims to be composed of the best-educated union men in the country.

I do not offer any opinion as to whether that claim is true or not, but it is a claim that has been made from one end of the land to the other. There are in progress in this country about 65 strikes declared by the International Typographical Union through various organizations. In accordance with this general strike movement the Typographical Union No. 6, of the city of New York, declared a strike, which went into effect on the 2d day of January last. That strike was directed against the Typothetæ of the City of New York, the claim on the part of the union being for the eight-hour day, coupled with closed-shop conditions—an impossibility from the standpoint of the practical printer in the city of New York. I am not here to discuss at any length the merit of the issue in such a strike, but so much is said which would tend to cast the merit entirely on one side that perhaps a word of explanation may properly be said.

Since 1898 wages have been increased three times in New York City, the day cut from ten to nine hours, an increase in the cost of labor of 30 per cent. This present demand for eight hours is an addition in flat increase of $12\frac{1}{2}$ per cent in the labor wage. The principal item in printing is the cost of labor. It is an increase in cost of from 15 to 20 per cent, 15 per cent being conceded by the typographical union. That is an impossibility for this reason: Printing can be done all over the United States. The cost of freight or express is such a small item that it is a question of competitive prices. Wages in New York are the highest east of the Mississippi. Fixed charges are far in excess of any other city.

If the union had thought to figure out as a business proposition what this meant to their employers, they would realize that they were killing the goose that laid the golden egg, as the New York Herald headed an editorial which very fully discussed the practical side of the question. Well, that is what caused the fight; there wasn't any preliminary discussion of whether such an increase would be accepted; it was an ultimatum with a refusal, because it was impossible to accept it. What was the condition of affairs just before the strike took place? If an electrotype plate, as a single illustration of that, was sent to the printing house to print an advertisement in a periodical, the presses could not start until a union compositor had set up every line of matter in that electrotype, and that matter then set up had to be pried as soon as the press was started.

A rule existed some time ago that the presses could first start if the magazine was late in going to press, but that implied that the matter could be set up without the extra expense of overtime wages, and so the rule was enforced that the press could not start until the matter was set up. That was one rule. Another was that a printer in his own printing shop could not touch a piece of type or the keyboard of his machine, and other restrictions innumerable which throttled production. This strike started on the 2d of January and started with the declaration on the part of Typographical Union No. 6—"Big 6," as it is known throughout the country—that they were gentlemen. This is the way the president put it: That they were gentlemen, men of education, and that there would be no trouble in the way of violence in this strike.

Now, the strike has furnished, under those favorable conditions, an illustration of why an injunction is a necessary remedy, and why notice in advance is destructive of its benefit. It is not a case of a union like the ironworkers, where greater violence has occurred, even in New York City, and where greater violence is to be expected, because the men have not the education; but it is a case where under the most favorable circumstances there have been since that strike began over fifty assaults on a force of 900 nonunion men. Some of them have been very serious; it has even been carried to highway robbery; they have been beaten in the most brutal manner.

Mr. PEARRE. What was done by the prosecuting officer in those cases, or the grand jury?

Mr. BEATTY. The prosecuting officer meets with the practical difficulty which I am here to explain.

Mr. PEARRE. That is the reason I inquired, because I supposed you could explain that.

Mr. BEATTY. Yes, sir. A detail was asked for from the police department of regular police officers, and about 100 regular police officers were detailed to the various shops. They were stationed two or three in front of the 40 shops scattered all over the city. That meant that the nonunion men would not be assaulted in the doorways.

Besides that, printed orders were given to each precinct that they must protect these nonunion men, and precinct detectives in large numbers have been going about at the time the men left work in order to offer what protection they could. Occasional arrests have been made in that way. In addition to that, the Typothetæ of the city of New York employed a force of special officers, who were sworn in

as special officers in large numbers. I can not give the exact numbers, varying sometimes; but it was an expense assumed by the Typothetæ of a great many thousands of dollars. In addition to that, a large number of the reliable men in the printing offices, the proprietors or their associates or men in the general offices, were sworn in as special officers.

Now, what was the condition of affairs? After two or three assaults occurred and arrests were made by these special officers in the printing establishments the strikers realized that the men were pretty well protected around the printing plants, and then new methods were adopted. First, we would hear of an assault 5 blocks away. The same night an assault would occur 5 miles away—that is, the man would be spotted as he came out by an old employee of that shop who knew everybody else employed in the other departments, the composing-room force being the only force on the strike. He would be followed, sometimes changing cars four or five times, sometimes going to police officers in distant parts of the city and asking for protection, the police officer pursuing the persons following him and sometimes making arrests.

But unexpectedly, at some distant point or some near-by point, he would be set upon and beaten, and the assailants escaped, without any trace of who they were being found. The nonunion men assaulted were men in most cases strangers in New York; they were men who did not know any of the strike pickets. There was a force, as has been proven in the case, of over 700 strike pickets, giving continuous service in this work under strike pay of the union. They were shifted week by week from one of 40 points to another. The plants are distributed over an area of 5 or 6 miles, or more than that probably. With such a system it was not astonishing that all the police force in the city of New York could not prevent such assaults occurring.

In January we had 8 assaults. I am speaking now of assaults as distinguished from threats, and I am speaking only of the cases which came to our knowledge—that is, the cases of unsuccessful intimidation. We know of a good many cases where the intimidation was successful, where, perhaps, after an assault a man was paid a sum of money and car fare to get out of town. Those cases do not appear at all. But the unsuccessful cases of assault where the man, notwithstanding the attempt to intimidate him, had the courage to come back and report the assault and go to court, swear out a warrant, and make an affidavit to the supreme court in case he appealed for protection, were, as I have said, 8 in number in January. In February there were more than 30—between 30 and 40—of such assaults, aside from threats. There were a great many very ugly threats—threats of death, threats of dynamite, and all sorts of threats to intimidate the men. On the 2d of March an injunction was applied for.

Mr. FOSTER. One question in reference to this. Were there any convictions?

Mr. BEATTY. Some.

Mr. STERLING. How many of those were members of the union?

Mr. BEATTY. Every man arrested in the strike was admittedly a member of the union on picket duty, and the arrests have at least reached the number of 30 since the strike began; that is to say, that

the Typothetæ of the City of New York did not make a single error in picking out a strike picket actually on strike duty charged with these crimes, and in many cases convicted them.

But most of the serious cases were acts of violence done in a way that made it extremely difficult, even by the expenditure of large sums of money on special officers and on detectives, to get the men who committed the acts. They were done at a time when the pickets could report that the coast was clear, and then the assault was committed; in two or three minutes it was over and the men escaped.

Mr. SPELLING. Are you an attorney representing the Typothetæ?

Mr. BEATTY. Yes, sir; I am.

Mr. SPELLING. Most of this information is second hand, and you haven't any personal knowledge of it, have you?

Mr. BEATTY. It is as direct as any attorney can get information; that is to say, I directed the preparation of all the papers in this suit; I have personally interviewed a number of the men; I have personally been in court in a number of the criminal cases; I personally argued the suit, and am thoroughly familiar with the affidavits on file, as I was obliged to go over them in some detail.

Mr. SPELLING. How many members of the union are there in New York—how many thousands of people belong to the Typographical Union?

Mr. BEATTY. Seven thousand.

Mr. SPELLING. And what you have been telling covers a period of how long?

Mr. BEATTY. From January 2 up to the 2d day of March.

Mr. SPELLING. And there were eight arrests and convictions for assault?

Mr. BEATTY. No, sir; there were eight assaults in January and 25 arrests. There are men now awaiting trial for assaults committed in January.

Mr. SPELLING. You said eight convictions, did you not?

Mr. BEATTY. No; I said eight assaults.

Mr. SPELLING. How many convictions?

Mr. BEATTY. Well, I should say about ten convictions up to date.

Mr. SPELLING. I thought you said eight a while ago.

Mr. BEATTY. A good many men escaped with reprimands, bringing with them a number of strike pickets who testified in their behalf.

Mr. SPELLING. You think there are 7,000 members of the union?

Mr. BEATTY. Seven thousand is the membership that they claim, 700 of whom are involved in this strike. The newspaper offices and many other classes of offices are not involved in this strike.

Mr. SPELLING. Is not really the whole union involved in it?

Mr. BEATTY. It is a strike declared by the union.

Mr. SPELLING. It is backed up by all the union men in New York, is it not?

Mr. BEATTY. It is backed by the Typographical Union. I don't know whether there are other unions or not.

Mr. DREW. Mr. Spelling seems to be trying to get at the percentage. Is it not a fact that these assaults were largely committed when the men in the newspaper offices were at work and when only the 700 men on strike would be able to do the assaulting?

Mr. BEATTY. Yes; that is true.

On the 2d of March Judge Blanchard, of the supreme court, granted an injunction, and from that time until the 31st day of March there were only three assaults, although the feeling had become much more bitter in that month than it was in February, in which latter month there were, as I have stated, between 30 and 40 assaults. That injunction was an ex parte injunction; it was based on papers between 300 and 400 pages long, with signatures to the affidavits of nearly 500 names, most of them nonunion employees.

It recited a hundred cases of violence and intimidation—specific cases—and many general affidavits as to the methods of picketing. An order to show cause was granted, with an injunction made returnable about a week after the injunction. At the request of the union there were extensions of the time to argue, and it was finally heard about the middle of March, I think, and decision rendered on the 31st of March, continuing the injunction without any modification whatever as to its terms.

Now, that is a practical illustration of what was done in that case to protect the property and to protect these nonunion employees.

Mr. SPELLING. Have you a copy of the order?

Mr. BEATTY. That is a copy [exhibiting copy].

Mr. SPELLING. I would like the stenographer to have it.

Mr. BEATTY. This injunction restrained the defendants from the commission of the acts enjoined, and restrained as an unlawful interference with and violation of the business and property rights of the plaintiff as mentioned in said complaint. As will be seen, the order reads in part:

That the defendants, Typographical Union No. 6, its officers, members, agents, servants, and associates, and each of them, and the defendants and each of them, and the agents and servants of each of them, be, and they are hereby, enjoined and restrained until further order of the court:

1. From inducing or coercing or attempting to induce or coerce, by any species of intimidation, threats, force, or fraud, any employee of the plaintiff, or any of its members, to quit the employment of the plaintiff, or any of its members.

That is, it restrains any species of intimidations, threats, force, or fraud. It then has other clauses drawn to cover all contingencies: "From preventing or attempting to prevent any person from entering the employ of the plaintiff or any of its members; from any and all acts of intimidation, threats, force, or fraud toward any employee of the plaintiff or any of its members;" and so on.

Now, that injunction is nothing more than a warning. No one could be arrested under that injunction order unless, after a knowledge of the order, he deliberately violated its terms.

There is not a thing cited in that order which any of the defendants had a right to do, and these injunctions, it should not be forgotten, are injunctions which either prohibit the doing of acts which are clearly crimes, as well as civil wrongs, or acts that are civil wrongs in which methods of legal procedure on the law side of the court would be inadequate in the way of compensation, and of course no procedure on that side of the court can be brought by way of prevention.

Now, why should there be such a great outcry against an order of that sort, and against an order which simply brings the rank and file of the union picketing on the street to its senses, and makes the

men, many of whom are not irresponsible in their acts, who are led by others, think of the acts that they are committing? Is it not a wise provision of the law that by an injunction which makes the acts complained of, specifically describe them as unlawful acts, and thus utters a warning against their commission—is not that the most sensible way to deal with crimes, with destruction of property, and with such injuries?

Mr. FULLER. Did I understand you to say “to deal with crimes?”

Mr. BEATTY. Yes; crimes which involve the destruction of property, not crimes because they are crimes alone, but crimes which are destroying the property rights of the parties who seek the aid of the court. Now, it is perfectly well settled that a court of equity may enjoin acts which amount to crimes. There is no question of that, sir, left open for discussion. The Debs case (158 U. S.) put at rest once for all that contention, which had no soundness anyway. It is not because the acts are crimes, but because of their consequences, and the mere fact that they happened to be crimes should not preclude a court of equity from preventing the consequences in the injury of property.

Now, if a five-day limitation of notice, or if a limitation of reasonable notice, had been given in this case we might have been confronted with the situation—and it is a very probable consequence—of having a hundred assaults on the night that the notice was given, because it is perfectly apparent to me that if Congress legislates requiring a notice to be given before an injunction can be granted, no act on the part of the defendants prior to the granting of the injunction can be made the subject of punishment by the civil courts, because Congress has declared that there can be no injunction without notice, and before there is an injunction there can be no contempt.

Mr. LITTLEFIELD. You mean no act in the nature of a contempt?

Mr. BEATTY. No act in the nature of a contempt.

Therefore it is an express legislative grant of immunity, so far as any remedy in the civil courts by injunction, to the defendants who are charged with the commission of these acts and charged with the probability of their continuing. Now, that would not be a judicious method of treating the subject in order to secure protection, but that is not the purpose of this legislation. The purpose is manifestly to secure protection, immunity, to the labor unions, not protection to property, and it is framed so that the property may be destroyed recklessly without any consequences following other than follow on the convictions for crime, and the difficulty is very great of getting evidence where no responsibility is fixed, where you have to pursue the individuals, who are under the direct guidance of their leaders under orders, as was proved in the city of New York.

The officers filed affidavits (all of the general officers of that union) stating that they had directed all men acting under them as pickets as to the way they should perform their duties, and they then went on with a naïve suggestion that if any acts of an unlawful character were committed by these pickets that the union—this is the language of the president—“hereby expressly disclaims any responsibility for each and every such act.” A convenient doctrine, which would be seized upon with avidity by every defendant whose agents committed a wrong.

I was not surprised to see that an amendment strikes out from the bill last introduced the provision for notice. It is not astonishing to me that there is a diversity of opinion even on the part of persons back of these bills—one side represented by my learned opponent who last addressed the committee, holding that notice would not be a proper restriction in labor troubles before an injunction is granted. The reason why that amendment is a safe one is because if you destroy the property most liable to impairment or destruction—if you destroy its property value and its protection by injunction—it does not make any difference whether injunctions are granted *ex parte* or with notice; they can not reach that property to protect it in any possible way.

So what is the object in having the notice? If the property is taken out of the sphere of injunction proceedings entirely, of course they do not care whether notice is given or whether the injunction is *ex parte*, and that is the reason why the amendment is a safe one—simply because the bill is so sweeping in its terms that no injunction *ex parte* or on notice could reach the evil, which exists to our knowledge throughout the country, from one end of the land to the other, of the destruction of that class of property most liable to destruction by the lawless acts of labor unions while conducting strikes.

Mr. LITTLEFIELD. You now refer to the bill introduced by Mr. Pearre?

Mr. BEATTY. At the request of Mr. Spelling; yes.

Mr. SPELLING. It is a federation bill—I beg your pardon.

Mr. LITTLEFIELD. Introduced by him for them?

Mr. SPELLING. Introduced by Mr. Pearre.

Mr. TIRRELL. I would like to ask you what would be your definition in Mr. Spelling's bill of these words:

Unless necessary to prevent irreparable remedy to property or a property right?

Mr. BEATTY. The definition of that phrase—not as it exists in this bill, for that is a question that I can not predict as to the interpretation that would be placed on it by the courts; but there is a perfectly well-settled interpretation of those words in the equity law to-day. It means an injury which the process of law on the law side of the courts can in no way remedy, and an injury of a serious character. Equity will not deal with trifles. If it is a serious injury, and an injury beyond the reach of remedies on the law side of a court, then it is an irreparable injury.

Mr. LITTLEFIELD. You mean given no adequate remedy?

Mr. BEATTY. Yes.

Mr. LITTLEFIELD. You do not mean absolutely no remedy at all?

Mr. BEATTY. No; I would not call it a remedy if it were entirely inadequate. Of course that qualification, as expressed by you, is the qualification to be found in all the decisions. I did not mean to misrepresent the law. In Mr. Spelling's argument, which I glanced over last evening, there were two things that struck me as particularly significant, and perhaps one of these indicates what this notice clause really means. Mr. Spelling said:

I will say in regard to the resolution introduced by Mr. Henry that it simply provides for the giving of notice, and that is incorporated in the bill that I have been discussing this morning.

Mr. PEARRE. Except that your bill provides a certain number of days, five days, and that is reasonable notice; the bill in your hands provides for reasonable notice, while the substitute provides for five days.

Mr. SPELLING. Just five days.

Mr. GILLETT. You mean you can make it ten or fifteen days, but it can not be less than five days?

Here comes the inadvertence on the part of Mr. Spelling, which discloses the character of this notice in injunctive legislation.

Mr. SPELLING. I would like to have it six months' notice.

That was an inadvertence, and it is a very significant one. Mr. Spelling wanted a bill with a provision that before any person in any Federal court in this land could get an injunction he must give six months' notice to the person charged to be about to commit the irreparable injury.

Mr. LITTLEFIELD. Suppose his remedy is in the nature of funeral obsequies?

Mr. BEATTY. I think that covers it fully.

Mr. LITTLEFIELD. That is obviously funeral obsequies.

Mr. PEARRE. What do you think of that provision—"reasonable notice"—in Mr. Henry's bill?

Mr. BEATTY. I think that is an evil provision, and the significant part of this provision for notice is that they want to destroy the effect of an injunction. They know six months' notice would destroy its effect; they know that this committee of the House of Representatives would not accept a bill which so manifestly destroyed the effect of an injunction.

Mr. PEARRE. You are equally opposed to any changes in the injunction law?

Mr. BEATTY. Yes.

Mr. PEARRE. Absolutely any change or modification?

Mr. BEATTY. No; I would not say that.

Mr. PEARRE. Are you?

Mr. BEATTY. I am in opposition to the five bills before the committee.

Mr. SPELLING. I would like to say that all that about notice has been stricken out, withdrawn by amendment.

Mr. GILLETT. I understand that so far as the bill introduced here by Mr. Spelling for the American Federation of Labor is concerned, they would not oppose the notice, do not object to it, because there might be an occasion when a notice would be a very material thing for the court to act upon.

Mr. PEARRE. I understand that question is in no way involved.

Mr. BEATTY. Not in this bill, but it is before the committee in two other bills.

Mr. GILLETT. In the Henry and in the Gilbert bill?

Mr. BEATTY. Yes; and it is still supported by other interests. I understand that the interests Mr. Fuller represents announce that they still support those bills requiring notice. I have already said that the reason why the notice clause was stricken out was because the property was made no property so that it could not be reached and so it was a small concession to strike that out, and they did so.

Mr. PEARRE. Do you believe any notice should be given before a restraining order or preliminary injunction or permanent injunction should be given?

Mr. BEATTY. I believe—and I have had a great variety of injunction suits—I believe that that is a matter that must rest in the discretion of the judge to whom the application is made. No injunction should be granted before preliminary notice unless the judge is convinced, upon an examination of the record, that if the relief be postponed until the preliminary notice there will be no adequate remedy that equity may then give.

Mr. PEARRE. Is it not a fact that some judges will not now issue an injunction or restraining order without notice or without evidence?

Mr. BEATTY. The evidence is presented in the full record.

Mr. PEARRE. I understand; but is it not a fact that there are judges now that will not issue an injunction or restraining order without notice or without evidence of the necessity for the injunction? I have known judges in my county who take that position.

Mr. SPELLING. It would depend on the circumstances of each case.

Mr. BEATTY. I have never been before a judge of a Federal court or the supreme court of New York who declared in any decision that I have been able to discover that he was unwilling to grant *ex parte* injunctions; but I have always been met with the inquiry, "Why do you need this injunction before the return of notice?" and I have gone prepared to discuss, and sometimes at length, the proof in the particular papers of that application which established the fact that the delay of a few days even would put in peril the granting of any relief by that court.

Mr. LITTLEFIELD. Of course, in order to call in the exercise of an extraordinary power, you have to show an extraordinary state of facts.

Mr. PEARRE. Not always.

Mr. LITTLEFIELD. It ought to be.

Mr. PEARRE. It ought to be, but it is not always so.

Mr. BEATTY. The *Typothetæ* injunction recites that the court is satisfied that the complainant demands relief which should be properly granted, and that there is good and sufficient reason to believe that the defendants will continue to commit these acts, and that they are irresponsible, and that if this injunction be not granted there will be no adequate relief. Those are the essentials which must be established before the restraining order is granted.

The other significant thing in the record was an inquiry which Mr. Spelling made when he was discussing the law of 1886, which gave labor unions the right to incorporate under the Federal statute. The necessity of incorporation was created by an act in England some years before that time. The labor unions in England were obliged to be registered, but here the option was given. Mr. Spelling turned to Mr. Gompers with the inquiry, "Have any of the unions been incorporated under that law?" and Mr. Gompers replied: "Very seldom." Now, *Typographical Union No. 6*, a union of fifty years of existence, one of the most prominent unions in the country, and such other unions as I have been able to examine reports and decisions in reference to, have all been unincorporated associations.

They have been elusive; they have been here one day and in another place another day if it would serve their purpose. There has been no property that could be reached; the funds are usually carefully covered so that they could not be reached in an action for damages,

and so that we could not have the situation that exists in England, as illustrated by the fact that the Taff-Vale Railroad Company recovered £23,000 for damages suffered in the course of a strike, the railroad union being registered and their funds being reached. There was that compensation in that particular case for some of the acts committed by that labor union.

But here we have a case where there is the least possible remedy in law of any case that can be conceived; you are dealing with a body of unincorporated associates, who are for the most part entirely irresponsible financially, who have no funds and no property that can be reached. So even assuming that in the ordinary course an action for damages would repair the damage done in that particular instance, you have an insuperable practical difficulty owing to the defendants that you must pursue. Now, is it not a perfectly wise provision of equity jurisdiction that so far as possible the acts should be prevented which cause those irreparable damages? Equity jurisdiction consists practically exclusively of the right to grant injunctions and the right to require accountings. That is practically the whole of equity jurisdiction.

It developed because it was found that the common law was absolutely impotent in the face of many situations which require relief. It is perfectly true that it has been said that equity developed in its earliest stages according to the size of the chancellor's foot, and there may be some justice in the criticism that law is administered, whether on the law side of the court or the equity side of the court, in accordance with the size—I will not say with the size of the judge's head, because that might be misunderstood—but in accordance with the mental qualities of the judge. That is perfectly true. But does legislation of this sort in any way help that situation?

It ties the hands of the court so that the real evils can not be remedied, and then it leaves to the interpretation of the same judges a complicated set of bills to construe all over again and build up a new body of case-made law on these new statutes. It is no simple matter to legislate on this subject, for we have radical differences of opinion between the interests representing one bill, and the interests representing another of these bills, a radical difference between them at the outset. We have five bills here. Even the last bill introduced, drawn by the counsel for the American Federation of Labor, has four or five amendments already suggested. Then we have the constitutional questions. What is going to be the result? As I said at the beginning of the argument, if you are going to make property of one class no property for the purposes of this bill, why can not Congress, there being no line of demarcation, say that for these particular purposes no property of any sort whatever shall be property for the purposes of such an act? There must be a limit somewhere. I have not come prepared to argue the constitutional question. I am going to leave that to others much more competent to do so. But there must be manifestly a limit to the power of Congress to create things such as property no property, and leave them property for other purposes.

MR. LITTLEFIELD. Do you think Congress can deprive property of its legal elements by legislation?

MR. BEATTY. I think it is an absurdity, if I may be pardoned for using such strong language, for Congress to call property anything but what it is. I do not think there is any such power vested in

Congress. This is an indirect method which should be reached by direction, and clearly recognized in its entirety if the bills provide that no injunction be granted in labor disputes.

Mr. PEARRE. You recognize the essential difference between personal rights and property rights?

Mr. BEATTY. Yes.

Mr. PEARRE. Is not that where the trouble lies?

Mr. LITTLEFIELD. What do you mean by the difference between personal rights and property rights?

Mr. PEARRE. The rights of a person and the rights of property. It is hardly necessary for me to answer your question.

Mr. LITTLEFIELD. I am inclined to think it is. What right has a man in property that does not attach to the person?

Mr. PEARRE. For instance, personal liberty is a personal right.

Mr. LITTLEFIELD. What rights does property have segregated from the ownership thereof which do not involve the rights of a person? I didn't know that property had some sort of a legal status independent of persons; if it has, I haven't heard of it.

Mr. PEARRE. This is a confusing of personal rights and property rights. It is pretty hard to make the distinction between the two so far as the law is concerned.

Mr. GILLET. The question is, Would a business right be a property right or a personal right?

Mr. LITTLEFIELD. Does property own anything? Where is the authority that holds that property owns anything? You can not protect a property right except that it is in personen.

Mr. SPELLING. There is some property held in common.

Mr. LITTLEFIELD. That does not change the principle; some is held in community, and their personal rights are just the same. Property that is held in common is held by somebody in common, and when you get to that it is somebody who has the right.

Mr. SPELLING. Each individual holds an undivided interest in common.

Mr. LITTLEFIELD. Suppose there are three men who own a piece of property, or one man owns a piece of property. Who is going to make a legal distinction so far as their rights arising under the law are concerned?

Mr. SPELLING. That is vested in the property.

Mr. LITTLEFIELD. It is not vested in the property at all; it is vested in the person. Property has not any right segregated from persons. That is my view. If you can find some authorities the other way, I would like to have them.

Mr. GILLET. The question was whether or not the right to do business is a property right.

Mr. LITTLEFIELD. Mr. Spelling holds otherwise.

Mr. GILLET. The right for a man to go out and sell goods is a property right or business right, whether that is such a right or can it be a property right in any sense that an injunction can be issued to protect it?

Mr. LITTLEFIELD. It is an incorporeal hereditament, when you come to that proposition.

Mr. SPELLING. That pertains exclusively to real estate, feasible and tangible.

Mr. LITTLEFIELD. Incorporeal hereditament, true; but they are incident to the person.

Mr. SPELLING. They are vested in the person.

Mr. LITTLEFIELD. Of course they are.

Mr. BEATTY. The law is now settled on the question that the right to do business is a property right.

Mr. GILLETT. That is what I would like to have you discuss.

Mr. BEATTY. That is a settled proposition in the law.

Mr. SPELLING. Will you allow me to interpose there?

Mr. LITTLEFIELD. The chairman called down a gentleman named Davenport here and would not let him propound a question, and while I have not any objection, yet it seems to me all the parties must receive the same treatment.

Mr. GILLETT (acting chairman). I think it would be more orderly if each gentleman would be allowed to finish his statement before going into any argument.

Mr. SPELLING. I do not understand that I am precluded from asking a question.

Mr. GILLETT. I think it is a rule of the committee that the gentleman who has the floor has the right to address the committee without interruption.

Mr. BEATTY. In the second paragraph of this bill, the conspiracy paragraph, there is one thing that has been overlooked, it seems to me, in making the provisions so sweeping. There is a great deal of confusion in some of these cases, these conspiracy cases, but there is one thing clear, that there are acts which can not be done by any individual which can be done by a number of individuals in concert, and if you have a conspiracy law, a civil conspiracy act, which says that no act when done in concert shall be a crime or a wrong or a proper subject of injunctive relief, if an act done by an individual would not be such a crime or such wrong or such subject for injunctive relief, you have swept away the protection in circumstances which frequently arise in labor troubles, and it is the intention of this bill to accomplish that purpose.

One picket stations himself in front of my premises. He stands there all day. He alone perhaps does no unlawful act. A thousand individuals come in front of my premises and stand there all day. Now, there is an act in concert, a conspiracy which may destroy my property, which may destroy my business, which may annihilate me in the commercial world; and yet, under the provisions of this simple act, the remedy is absolutely swept away, for their answer is, each one of those individuals has a clear right to stand in front of my premises all day. Therefore the act provides that the thousand who act in concert, each having that right, may stand there all day, and my business be destroyed.

That is simply one illustration of what they are aiming at in the conspiracy bills. They know that one man can not intimidate a group of 5 nonunion men, but they know that 500 union men can intimidate a group of 100 nonunion men, and no matter how many guards you put around your nonunion men, your pocket-book will be exhausted long before you can meet the situation which is presented by the immunity given by the conspiracy clause of this bill to the gathering together, in any number, for the purpose of, by their numbers, intimidating the workmen.

Then we have another provision here as to contempts of court. That bill reads very well until we get to the clause which provides that at the option of the man accused of contempt of court, this charge may be tried by a jury. If that is so, the legislature seeks to take away from a coordinate branch of this Government the only weapon in its hands to protect itself, and that seems to me so clearly unconstitutional, so clearly beyond the power of Congress, that the situation presented by tying the hands of the judiciary so that they can not administer their own courts, the picture of that situation is the answer to the contention that such a provision would be constitutional. Would the legislature accept the view that all the questions to be determined by it under its constitutional prerogatives might be transferred to some body, such as a jury, some outside body, to be determined?

It should be recalled that the punishment by process of contempt is the one weapon that has been committed to the judiciary under the whole judicial system. The orders of the court are enforced by executive officers, by a different branch of the Government. The court can not step down from the bench and enforce its own decrees. The court can not levy execution upon property. The court can not place persons in jail. It is the direction which is given to other officers. But where there is an attack made directly upon the power of the judiciary, an attack which is a contempt, whether direct or indirect, whether in the presence of the court or at some distant point, there is belonging necessarily to the judiciary the right to punish that act in its discretion.

MR. DE ARMOND. Had you thought about the fact that the inferior Federal court would not have existence except for Congress, but that Congress would have an existence without reference to the inferior Federal courts; does that make any distinction in your argument?

MR. BEATTY. It does not seem to me to make any distinction, because if there is any inferior court the judicial power of the United States is vested in the Supreme Court; there is judicial power in this section, and that is all vested in the Supreme Court, unless Congress in defining the jurisdiction separates from that judicial power certain minor portions of the jurisdiction.

MR. DE ARMOND. Now, why minor; does the Constitution say minor?

MR. BEATTY. I am saying as a practical question it is a separation of the minor from the greater.

MR. DE ARMOND. Your illustration a moment ago was that in meeting the question of whether or not it would be constitutional for Congress to provide in a trial of a certain class of contempts, that there should be a jury pass upon the question of guilt. By way of illustration you raise the question of whether Congress or some other power should direct what courts should do. Now, inasmuch as Congress creates the judicial power, do you not think that Congress has the right to direct what they shall do?

MR. BEATTY. I do not. Congress does not create the judicial power; the judicial power is created by the Federal Constitution, it resting in the Supreme Court; and it may be exercised by such inferior courts as may be created.

MR. DE ARMOND. Do you mean when Congress creates a court it has to give it all the power that the Supreme Court has?

Mr. BEATTY. No; it gives it such powers as to jurisdiction as Congress determines; but all other judicial powers remain in the Supreme Court, and Congress is without the power to take from the Supreme Court the judicial power which the Constitution vests in that body.

Mr. DE ARMOND. Then you have the Supreme Court in mind when you make this comparison and not the inferior courts?

Mr. BEATTY. I have the inferior courts in mind, because when this power is conferred upon these courts there is a necessary incident to any judicial power, which is the right to punish for disobedience of its orders, and the disobedience of an order of an inferior court can not be punished by the order of the Supreme Court. It is a matter incidental, necessarily incidental, to the administration of the particular case committed to that court.

Mr. DE ARMOND. Congress commits it, and then has not Congress the right to determine what is incident to it?

Mr. BEATTY. No.

Mr. DE ARMOND. You mean the condition is just this: That Congress may or may not call a court into existence, but when it decides to call it into existence, then it has no power over it. Do you mean that?

Mr. BEATTY. No, sir. I mean Congress can call a court into existence and can confer upon the court great or little jurisdiction as to the cases which it shall hear or determine, but an incident to any case committed to it is the determination of the case, and no case can be determined without the power, the incidental power in the court, to preserve its power in enforcing such decrees.

Mr. ALEXANDER. You make a difference, then, between judicial function and judicial jurisdiction?

Mr. BEATTY. I do. The jurisdiction is a matter of convenience, whether admiralty shall be administered by the circuit court is a matter of convenience and a matter entirely within the powers of Congress. Whether a decree in admiralty shall be a decree in admiralty is not a question for Congress to determine. If they commit an admiralty jurisdiction, a jurisdiction over certain cases, they can not say you shall hear those cases but you shall not decide them.

Mr. DE ARMOND. This is not a question of decision. Is not this a question of procedure?

Mr. BEATTY. No; a contempt is an essential question.

Mr. DE ARMOND. But the contempt lies behind the issuing of the injunction for a violation of which or a failure to obey which, as the case may be, the contempt is supposed to exist.

Mr. LITTLEFIELD. That is, there may not be any contempt when the order is made; there will not be—

Mr. BEATTY. No; I am talking of the instance where contempts may arise, and when they do arise their punishment is an essential part of the judicial power.

Mr. PEARRE. As I understand it, you claim that there are certain inherent powers in courts after they are once established by the Congress of the United States which Congress can not shake or take away in any way.

Mr. BEATTY. There is such a thing as judicial power.

Mr. PEARRE. That is the moot question to-day in the Senate over the rate bill, as I understand it.

Mr. BEATTY. Judicial power may be committed to inferior courts,

but what you as the Congress of the United States commit to the inferior courts must be judicial power.

Mr. ALEXANDER. Then, Mr. Beatty, you do not agree with Senator Bailey that if Congress can create and if it can abolish it can modify?

Mr. BEATTY. I will not say that I am familiar with the contention made, but I do agree with that proposition excepting that I understand it perhaps in a somewhat different way. Congress may create a court and confer upon it judicial power. Congress can not create the judicial power; that is created by the Constitution. When it, the judicial power, is conferred upon a court, the judicial power can not be taken away by Congress.

Mr. ALEXANDER. Can it be taken away without abolishing it?

Mr. PEARRE. But you can not destroy the judicial power by leaving it in a court robbed of its essentials.

Mr. PALMER. You do not think you can split up the judicial power into vulgar fractions and take away a certain fraction of it and leave a fraction of it?

Mr. DE ARMOND. Is it claimed by you that you can take away part of it but not all of it?

Mr. BEATTY. You can take away the right to exercise jurisdiction as to any particular class of cases; you can not take away the judicial power itself; it is the jurisdiction.

Mr. LITTLEFIELD. You can not confer the jurisdiction and impair the jurisdiction within the exercise of that jurisdiction.

Mr. BEATTY. That is it, the jurisdiction to exercise it may be given or taken away.

If you grant jurisdiction over a certain class of cases, how in the name of heaven can you take away from the court the power to do that thing, to decide and to determine and to carry into effect its decrees?

Mr. LITTLEFIELD. Here is Senator Bailey's proposition. The power to create and the power to destroy must in the nature of things include the power to limit and control.

Mr. DE ARMOND. That seems logical.

Mr. LITTLEFIELD. That involves the whole proposition.

Mr. DE ARMOND. Would you not concur in that?

Mr. LITTLEFIELD. It is quite obviously not true.

Mr. DE ARMOND. You think it is not?

Mr. LITTLEFIELD. Absolutely not. I don't think it settles the proposition that they are talking about; but there is not the slightest doubt that it is not true.

Mr. PALMER. Because Congress can not create judicial power; the Constitution does that.

Mr. GILLETT. The Congress creates a court and then the Constitution vests it with judicial power.

Mr. BEATTY. Congress confers the judicial power, for instance, the admiralty judicial power of the United States upon the district courts. Could Congress confer the power to try all admiralty cases and then remit to Congress the record of evidence taken for such action as Congress should see fit? What is judicial power that is not the power to act? I might say that there is no power without the power to act.

Mr. DE ARMOND. Let me ask you a question, since you insist on

hanging on that proposition. Does judicial power reside with the judge of the court only?

Mr. BEATTY. It resides in the court.

Mr. DE ARMOND. May a court not consist, for certain purposes, of a judge and a jury in determining a matter?

Mr. BEATTY. Why, yes; so far as the determination of issues of fact are concerned, under our jury system as established; but the determination of the case, the exercise of judicial power, is not by the jury, because the record of what a jury says is not judicial power; it is a nullity until the court enters a decree on that verdict.

Mr. DE ARMOND. I understand you to concede that the jury may constitute a part of the court?

Mr. BEATTY. It may constitute a part of the court for the purpose of determining certain issues of fact.

Mr. DE ARMOND. Then let me ask you another question on that, to follow out your own reasoning. Is it not to determine such issues of fact as the power which creates the court—the Constitution—says shall be determined in that way, or may be determined in that way; how would that do?

Mr. BEATTY. No.

Mr. DE ARMOND. Why not?

Mr. BEATTY. Because if you make it a determination, if you make it a determination that is a judicial—

Mr. DE ARMOND. Let us get away from that technicality. You said determination, and that is the reason I called it that. Call it anything else.

Mr. BEATTY. If you make the verdict of the jury a final judgment in the case, you have taken from the courts of the United States and conferred upon juries the judicial power.

Mr. DE ARMOND. That is not at all responsive to my inquiry, and has no relation to anything I suggested. My proposition is—I believe we have agreed—that you can have a jury as constituting a part of a court.

Mr. DAVENPORT. In equity.

Mr. DE ARMOND. Let us not divide this up too much. Yes; in equity, too; since you like to have an answer to that.

(Mr. Davenport made another remark which the reporter could not hear.)

Mr. DE ARMOND (continuing). In the first place, you have not any court without that Congress creates it, and Congress provides that a jury may operate in certain cases; that the courts shall be constituted that way. You were talking about the verdict of the jury taking the place of a judgment. I am not talking about that. When an injunction has been issued and somebody has been brought before the court charged with violating the injunction, and the question of fact arises as to whether or not that person has violated that injunction, if the Congress provides that that fact shall be ascertained by the verdict of a jury, where is the unconstitutionality in that and where is there any lapse or waste or absence of judicial power?

Mr. BEATTY. In the fact of whether the question of whether the court's dignity has been treated with contempt, of whether the court's orders have been disregarded is an essential question to the existence of the court.

Mr. DE ARMOND. Let us get at that. The contempt is said to consist in doing or not doing some particular thing. Say this is an affirmative matter. A party is charged with having done something in violation of an injunction and is charged with contempt of court. He says he did not do it, and the Congress provides that the fact of whether he did it or not shall be ascertained by the verdict of a jury. Now, then, that is the fact, if it is done.

The question of whether it is contempt or not is not involved, but it is a question whether it is unconstitutional or not to provide that a jury shall determine the facts in such a case, to provide that that court, which would have no existence if Congress did not make it a court, may ascertain in their particular way the fact of whether he did that particular thing. Now, it is unconstitutional to provide that a jury shall determine whether he did it?

Mr. BEATTY. It is.

Mr. DE ARMOND. I should be enlightened on the Constitution if you should tell me how or why.

Mr. BEATTY. If in fact the act were never committed——

Mr. DE ARMOND. That is the very question.

Mr. BEATTY. Yes; if the act were committed the power is conferred on a jury in that case to say that it was not committed and to defeat the power of the court.

Mr. DE ARMOND. Does that raise a question of constitutionality? Would not that destroy the right of a jury trial at any time, because it is within the power of the jury at any time to find against the facts; therefore would not that lead to saying that it would be unconstitutional to have a jury at all?

Mr. BEATTY. No; because the determination of a case one way or the other is not essential to the existence of a court.

Mr. DE ARMOND. Do you claim that it is essential to the existence of the court that it should be found by the judge of a court that anybody brought before the court for contempt is guilty of that particular contempt; do you claim that? If not, you are making your premises too broad.

Mr. BEATTY. I do claim that the power to determine the guilt or innocence of anybody before that court, where the charge is the violation of the order, the exercise of that judicial power of the court is essential to the court, because otherwise the power of the court is utterly nullified. It is nullified just as much as if Congress should enact that evidence shall be taken before a judge as to any contempt committed, which evidence shall be referred to Congress with the recommendation and opinion of the judge thereon, for such action as Congress may see fit. It is true that the jury system has grown up in order to relieve the court of the determination of certain issues of fact.

Mr. DE ARMOND. Is that the reason of the jury system; is that what the jury system is rested on—to relieve the court of the determination of certain facts?

Mr. BEATTY. Not only to relieve the court of the determination of certain facts, but for the determination of those facts.

Mr. DE ARMOND. You did not have it quite right the first time.

Mr. BEATTY. No; that is not quite the correct statement.

Mr. DE ARMOND. I thought the jury had some function beyond merely relieving the court.

Mr. BEATTY. To determine facts in certain cases not involving directly the dignity of the courts; the exercise of judicial power.

Mr. DE ARMOND. Your idea is, then, that the dignity of the court is especially preserved by the Constitution, and that anything the court thinks affects the dignity of the court is by virtue of the court thinking so shielded and protected by the Constitution?

Mr. BEATTY. That is one way of putting it; but I would put it slightly differently. I would say that obedience to a mandate of a court is essential to the exercise of judicial power.

Mr. DE ARMOND. And that the creator of that court shall not determine how that obedience shall be secured, but the creator of the court is powerless to determine anything about it, and the creature has sole and exclusive power to determine about it.

Mr. BEATTY. Yes; the creation of the jurisdiction of the court can not provide any means by which the question of whether the order has been obeyed or not is to be determined over the head of the court, because if they do, then wherever the disobedience occurs there may be a determination by another body, a jury or a committee of Congress, or some outside body that no disobedience has occurred, and the court's hands are absolutely tied by that legislation.

The CHAIRMAN. I would interrupt you for the purpose of informing the committee that the House has concluded, on account of the great calamity in San Francisco, to adjourn.

Mr. BEATTY. That was nearly the conclusion of my remarks.

Mr. LITTLEFIELD. Your proposition is that in order to enable the courts not only to maintain its dignity, but its integrity, and protect itself in the exercise of its judicial functions when sitting as a court, that it is absolutely necessary for it to have that inherent judicial power; that it can not be emasculated, and by the legislative power deprived of the right to protect itself in the exercise of its judicial functions.

Mr. BEATTY. That is exactly the proposition as a practical matter.

Mr. LITTLEFIELD. As long as we are about to conclude, bearing upon Senator Bailey's broad, comprehensive, statement that the power to create and destroy involves the power to control, and your statement that the jury is an essential part of the judicial power (with which I do not disagree), I would call your attention to that effect. I suppose that the fact that the courts have repeatedly held that the legislature could not make a jury of 9 men instead of 12, or make a verdict valid that was given by a majority instead of the 12 men; that there is a case where the legislature could not either control or limit, and rather against the proposition laid down by the distinguished constitutional lawyer to whom I have referred.

Mr. DE ARMOND. How does that bear on his proposition?

Mr. LITTLEFIELD. It has a very important bearing, it seems to me.

Mr. BEATTY. As a practical matter it is easy to see that if the sentiment in a particular State were against the enforcement of judicial orders of a particular class (and that is where the evil comes in), every injunction order issued in a labor dispute might be held by the jury to whom the determination of the question of fact was committed not to be violated, no matter how glaring the evidence, no matter how clear the facts, and it would mean, then, that a jury in that particular locality could nullify every injunction of this character. That is the true effect.

Mr. DE ARMOND. Does that bear on the constitutional question?

Mr. BEATTY. It illustrates the reason for the judicial system as a system, as a power, being committed to a coordinate branch of the Government in its entirety, and the question of subdividing it into jurisdictions for this and jurisdictions for that does not confer any power to destroy it by taking away its primary characteristics of power to enforce its personal order.

Mr. DE ARMOND. If that has relation to the constitutional question would it not apply to any other question just as well? Suppose sentiment prevailed in a certain State of such a character so that the revenue laws could not be enforced against the collecting of a tax upon the manufacture of distilled liquors, would not that be a reason whether there should not be jury trials there, on your theory?

Mr. BEATTY. There is a very different question, to my mind, as to whether the court shall have the power to enter a particular order, and whether, when the order is entered, it can enforce obedience.

Congress unquestionably has the power to say that the enforcement of the revenue laws shall not be committed to district courts. That is a question that comes up before the judicial power is called in question, but when it is once called in question it is a power sacred under the Constitution, and you can not strip it of its essential attributes and call it a power.

That is the contention that seems to be the reason, from the constitutional side, why that provision of permitting jury trial in contempt cases should not be accepted by this committee. On the practical question I think enough has been said on the general subject to cover that matter.

(Thereupon, at 4 o'clock, the committee adjourned until to-morrow morning, Thursday, April 19, 1906, at 10 o'clock.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Thursday, April 19, 1906.

The committee met at 11 o'clock a. m., Hon. John J. Jenkins in the chair.

Mr. SPELLING. Will the committee allow me to suggest an amendment? On page 1, line 6, strike out the words "or between employers." The comma also should go out. On page 2 I will withdraw the amendment I proposed yesterday to strike out the word "mere." I withdraw that amendment. I proposed it yesterday. I now propose to let the word stand.

STATEMENT OF WALTER DREW, ESQ., OF GRAND RAPIDS, MICH.

Mr. DREW. Mr. Chairman and gentlemen of the committee, I attended the first hearing, in March—March 17 and 18, I think. At that time I was authorized to oppose these measures in behalf of the Citizens' Alliance of Grand Rapids, the Citizens' Alliance of Saginaw, and the Citizens' Alliance of Jackson, Mich.; also the Employers' Association of Grand Rapids, which comprises the furniture manufacturers of Grand Rapids, the team owners of Grand Rapids, the

Typothetæ of Grand Rapids, and the Metal Trades Association of Grand Rapids.

Since that time and at the present hearing I am authorized to speak for the National Association of the Erectors of Structural Steel and Iron of the United States. The members of this latter association produce substantially all the structural steel and iron used in the United States, and put up 80 or 90 per cent of it. First and foremost, however, gentlemen, I want to say that I stand for the alliances first mentioned, and perhaps a word as to what these alliances are would not be out of order.

The Citizens' Alliance, in our part of the country at least, is not an employers' association. It is composed of lawyers and doctors and merchants and clerks and bankers and brokers and insurance men and, of course, some employers.

Mr. PEARRE. Any laboring men?

Mr. DREW. We have some laboring men in our alliance in Grand Rapids. I understand there are some in the alliance at Saginaw, but none in the alliance at Jackson.

The employers do not control these alliances. They represent the public pure and simple. The platform of these alliances is opposition to the closed shop, opposition to violence, lawlessness, coercion and intimidation in labor matters, either on the part of the employer or the employee, opposition to the boycott of the union and the blacklist of the employer, opposition to the sympathetic strike of the union or the sympathetic lockout of the employer.

Reduced to simple terms, the platform of these alliances is that in the controversies between capital and labor there shall be fair play, and the organized, liberty-loving public will stand by and referee the game and see that there is fair play and that every power in a community, including its own power, shall be brought to bear upon either party in the labor controversy to see that our laws are observed and that fair methods and American ideas obtain in labor fights. We are tired in Michigan of the invasion of simple, primitive, fundamental liberties.

Gentlemen, this discussion has, on account of the number of bills before the committee and the frequent change of front on the part of the proponents, assumed a rather chaotic character.

I have followed all these hearings closely, and I confess that I am at a loss at the present time to know just exactly what is wanted, and I do not see how this committee, in the present state of affairs, could report out any of these bills now before it and satisfy the different interests that have appeared before it in behalf of those bills.

Boiled down, however, there seems to be left two bills, one the Gilbert bill, which is championed by the Brotherhood of Locomotive Engineers through their able counsel, Mr. Fuller. The Gilbert bill provides that there shall be no restraining order in labor cases except after due notice and hearing. The next bill is the bill championed by the other wing of the labor associations of this country, the American Federation of Labor, introduced by request by Mr. Pearre and prepared by Judge Spelling.

This bill in one of its features—that is, in so far as it provides that any agreement, and the carrying out or entering into of any agreement, which would not be a crime on the part of one individual shall

not be a crime on the part of a number of individuals combined—is similar to the Little bill. In its other feature, the defining away of property by saying what shall constitute property and property rights, or what shall not constitute property and property rights, this last bill is absolutely new in this discussion.

Now, Mr. Chairman, there are some real questions in this discussion. We have had a great many side issues; we have had a great deal of technical discussion, but there are some real fundamental questions which this committee should concern itself about, in my judgment.

The principles of law that have been attacked by these different bills are old and well settled, recognized by our courts with practical unanimity. The practice relating to their application is old and well settled. Now, those who come before Congress asking either that these principles should be changed or that this practice should be changed, have the burden of proof to satisfy. There is something more for them to make out to the committee than that Congress can do it—in other words, that it is constitutional.

They have the burden of proof to show either that these principles are wrong or that they have been applied by our courts unfairly and improvidently, or with discrimination between class and class; and having made out either one of these two things, they have still the further burden of proof, Mr. Chairman, to show that the best interests of the public, the greatest good to the greatest number, demands a change. They frankly admit that this legislation is class legislation. Now, gentlemen, there is no objection to class legislation—that is, legislation which shall take the form and appearance of class legislation—if it can be shown that, although being class legislation, yet when applied it will result in public good; that is, good to the greatest number.

But class legislation which can not satisfy that burden of proof, which really is not class legislation pure and simple, but is intended for the benefit of one class as against another, is intended to prostitute the power of the government of the people to the use and service of one class as against another class, is vicious and dangerous, and the government, Mr. Chairman, that lends itself to that sort of legislation has in it already a dry rot. Their only remark about class legislation is: "We admit that it is class legislation, but it is constitutional;" and they cite precedents to show it. I say they have a further burden of proof; having admitted that it is class legislation they must show that it will redound to the public good.

Now, gentlemen, I am going to take for a while a line of discussion somewhat different from any I have heard before this committee. I have been engaged in labor troubles as a practicing attorney for the past two years. I have also had occasion to look into the matter from the standpoint of political economy to some extent, and to get down to the underlying grounds of these things and to know what the real purposes and motives of trades unionism are. And at this point, Mr. Chairman, let me say that no one recognizes more clearly than do I the value of collective bargaining. This is an age of combination. The time when individual can deal with individual has largely gone by. Associations of workmen have come, and have come to stay.

I think it is a good thing that they should, and within proper limits they should be encouraged and helped. But trades unionism is not

before this committee or this Congress asking for any law or liberty or privilege to further what it pleases to term its "legitimate purposes." The purpose of the legislation asked for at this time has to do with something entirely different. It has to do with methods and purposes which I shall endeavor to show are far from legitimate. Without fear of great contradiction, or of any successful contradiction, I will announce that the fundamental purpose of trades unionism at the present day is to establish and maintain a monopoly of the labor market. This is frankly stated by many labor leaders. In some of the constitutions of different councils and associations it has been stated.

Anyone who has followed at all the trend of trades unionism in the last few years would not spend a moment discussing the proposition. In conformity with the principal purpose of securing a monopoly, several incidental purposes are common to all trades unions at the present time with which I am familiar. In the first place, the closed shop is the openly announced and general principle of every trades union in this country except the Brotherhood of Locomotive Engineers and the National Association of Stationary Engineers. Next, the principle of limitation of apprentices, saying that the employer shall hire only so many apprentices and no more, is one of the fixed principles of trades unionism at the present time. Next, restraint of output. While not openly conceded or avowed on the part of labor leaders, this is still admitted to be, by those who have investigated, one of the practical features of present-day unionism.

Restriction of output simply means the doing of so little work on the part of men that it takes five men, say, to do work which three men should be able to do. Lastly, opposition to labor-saving machinery has been one of the fixed principles of at least a number of trades unions. In October of the present year a striking example of that kind was found in Cambridge, the case of Norcross Brothers *v.* The Bricklayers' Union. The contractor, who was putting up a building for Harvard College, used some machine-made arches in that building. He was informed by the walking delegate of the bricklayers' union that unless those machine-made arches were taken out and the work rebuilt by union men by hand a strike would be called upon all his buildings in the city of Boston.

The case was appealed to the courts, and the supreme court of Massachusetts condemned the union and issued an injunction. And finally no more striking instance of the purpose of the union to secure and maintain a monopoly is to be found than in their attitude toward public work. In perhaps a majority of the States of the Union in the supreme court will be found cases going up from different localities where the unions have succeeded in getting an ordinance or a resolution passed by some public body to the effect that public work should be done by union men only, or that public printing should have the union label upon it, and in every one of those cases those ordinances and those contracts and those resolutions have been held absolutely void.

Yet back of it all, and significant, gentlemen, is the spirit which prompted those resolutions; the demand on the part of a few members of an association that public work even should be turned over to them to the exclusion of all others; no regard whatever for the principle that government should be for all; no regard whatever for

the principle that government should not prostitute itself or discriminate as between class and class; following only their own selfish immediate purpose, desiring a monopoly of the labor market, they will come into the halls of legislatures and take these discriminations and these privileges. Every one of these things that I have mentioned, gentlemen—closed shop, limitation of apprentices, restriction of output, opposition to labor-saving machinery—are crimes against industry. No other word can characterize them. Economic evils is a pale term.

Every political economist who has written upon the subject has characterized these features of trade unionism as economic evils. I repeat, it is a pale term. These things are crimes against industry, sapping the very sources of our national prosperity and progress. So much for the purpose—the underlying purpose, may it please you, Mr. Chairman—of the unions, when they come before you asking for this legislation.

Now, a real monopoly—a real actual monopoly—by 7 per cent of any class of citizens is impossible, absolutely impossible. They still want the monopoly. To make up for their lack of a real monopoly, what do they substitute? They substitute coercion and compulsion; they substitute the force of their combination, brought about in localities and upon individuals and upon third persons. There is a connecting link between the monopoly of 7 per cent and its working out in practical affairs. Compulsion and coercion are absolutely essential to their programme.

Now, how did this compulsion and coercion work out and where is it applied? It begins at the very fountain head, gentlemen. The individual men are coerced to join the union. Case after case in our courts of last resort have dealt with this proposition—have been compelled to deal with it—and how few cases ever get into the courts at all where the individual is compelled to join the union.

Only in a rare instance, where he has revealed or where the right of some third party has come in, or where the financial interests involved have been big enough to warrant it, have these cases got into the courts; and yet, as I say, case after case will be found in the decisions dealing with this point and showing that it is a common practice for the union to compel membership on the part of the outsiders. Compulsion by social ostracism; compulsion by threats and intimidation; lastly, in some unions and some localities, by violence and crime.

Next in order to perfect a national working organization and bring their monopolistic machine into practical effect, local unions are compelled to join larger associations, and here the cases have gotten into the court. The McQueed case, in New York, and the case of Plant *v.* Woods, and other cases—for instance, Erdman *v.* Mitchell, in Pennsylvania—cases where associations organize together, unions desiring to remain apart and aloof from larger associations have been compelled to join a larger association or have been destroyed and put out of existence, as was the McQueed Protective Association in New York City.

But the line of compulsion extends further, gentlemen. Having the men in the union, they erect a system of compulsion without their own ranks; by-laws prescribing fines, penalties, and forfeitures are enacted, not to speak of the social ostracism and the violence by which

the men are compelled to join the union; laying aside violence, by-laws with heavy penalties, fines, and forfeitures hold him in line and hold him in obedience to the mandates of the officers or the executive committee of his union. Here, too, the cases have gotten in the courts.

The compulsion extends further. It extends to the employer. There is no need to rehearse before this committee the means by which employers are brought to terms—the individual employer. Suffice it to say that it is coercion and compulsion pure and simple. But, gentlemen, and most vicious of all, the compulsion extends to innocent third parties; men who have no question whatever at issue with the union; men who wish to hold themselves aloof and be neutral, when some question arises between an employer and his men, are dragged into the controversy whether they will or not, and not only dragged in, but dragged in in such a way as to put them to serious financial loss or properties actually ruined.

The union not only ceases to deal with a certain man who is unfavorable to them, or with whom they have a controversy, but they go to third parties and say to them, "You, also, must cease to deal with this man, or we will cease to deal with you," which is the mildest expression that they use. And third parties are dragged in through means of the sympathetic strike. An employer having no question whatever with his men, but whose men happen to be members of a certain organization that have a question at issue with some other employer finds himself met with a demand that he shall not do business with the other employer who has a question at issue with the union.

Mr. PEARRE. May I ask you a question?

Mr. DREW. Certainly.

Mr. PEARRE. Does the employer resort to the same tactics?

Mr. DREW. Oh, yes.

Mr. PEARRE. With the blacklist?

Mr. DREW. Yes; there are cases involving the blacklist, but the reason I dwell upon this side of the question is because the employers are not here asking any legislation.

Mr. PEARRE. I wanted to ask a question to see what the evils are, if there be any.

Mr. DREW. I do not deny that many evils are largely in common.

Mr. PEARRE. Do you think there are any evils to be corrected by legislation.

Mr. DREW. I am not pressing legislation.

Mr. PEARRE. But that is what I want to know, as a member of the committee. The committee has this before them, and I am sure we are all anxious to know whether it is necessary to pass any legislation to meet any existing evils, whether we shall pass legislation which will be a remedy for any evil that exists, if there is any evil. The point I want to get at is whether there is any evil here which this committee ought to correct, any evil of any kind.

Mr. DREW. I would prefer not to answer that question, because I came prepared to discuss the situation as it is presented.

Mr. PEARRE. I do not want to embarrass you.

Mr. DREW. I am not embarrassed, and I think I could discuss it; but I should prefer not to.

Mr. PEARRE. I have no doubt you could.

Mr. DREW. I do not want to appear in the light of proposing any legislation of any kind.

So, gentlemen, we have the present situation. We have the union with its underlying purpose of establishing and maintaining a monopoly. Subsidiary to this purpose we have the other purposes and principles—limitation of apprentices, restriction of output, and the like. To make this monopoly effective, we have a system of compulsion and coercion, beginning at the beginning, at the very fountain head of their organization and extending in its ramifications to everybody in the community who may happen to have anything to do with either party to a labor controversy.

Are these things, gentlemen, in line with the public good? Are these things in line with the development and extension of our industries? Are these things to be commended as perpetual fixtures in our industrial system? Every political economist who has written on these subjects most emphatically says no.

Mr. PALMER. You say you approve of the unions, do you not? You approve of organized labor?

Mr. DREW. I do.

Mr. PALMER. How would you have them manage their business if the way they manage it does not suit you? How would you have it done? Did you ever know of a strike that could get along without violence—a strike that amounted to anything?

Mr. DREW. Yes; I have known strikes get along without violence, but I have not mentioned violence as incident to a strike yet; and these bills we are discussing I do not think have to do with violence as much as they have to do with other things. That was a subject that I was going to speak of later.

Mr. PALMER. All right.

Mr. DREW. With this purpose of the monopoly we have this great system of coercion and compulsion built up. We find on the part of unions in pursuit of these purposes and these methods opposition to our industrial good, opposition to the good of the general public, as they are clearly on their face a willingness to prostitute our Government to the carrying out of these purposes and these methods and to legalize them.

Now, gentlemen, we come to the courts, and it is about time that we arrived at the courts. And, perhaps, with what we have seen of the purpose of unionism and its methods, we will understand a little more clearly why the union objects to the principles which the courts have enforced.

The courts have simply applied to present-day labor controversies, to combinations of employers as well as combinations of employees, the old principles of the law of conspiracy, common-law conspiracy. The courts have held that the purpose of establishing and maintaining a monopoly is unlawful, and that a combination of men with such a purpose in mind, trying to carry it out, is an unlawful combination—that is, a conspiracy. That principle has been applied, as you gentlemen well know, to our great business interests impartially with our labor associations.

The courts, furthermore, have said that the closed-shop contract, under certain conditions and with certain restrictions, is unlawful; and I may say here, gentlemen, that although it may not be known to you, yet this rule of law is one that has become well established as

to associations of business men or of capital as distinct from associations of laboring men. The courts have held in accordance with these principles of the common law that malicious injury by a combination is unlawful; that the purpose to inflict injury on the part of a combination is an unlawful purpose, and that a combination with such a purpose is a conspiracy. The courts have held that compelling a man to join the union by threats, intimidation, and coercion is unlawful.

The courts have held that bringing to bear threats, intimidation, and a force of combination in superior numbers upon third parties in the shape of a boycott is unlawful. But lastly, gentlemen—and something I want to speak of just a moment, and which I think is one of the things which has moved the proponents to action most—is the fact that the courts have gone behind the apparent combination of men and have found out the real combination and fixed the liability there. They have said that coercion within a combination by one portion of an association brought to bear upon another portion of an association is just as unlawful as coercion outside a combination. In other words, the holding of union men—or members of any association, for that matter—to a certain line of action by means of fines, penalties, and forfeitures in connection with a subject which inflicts injuries upon third parties is unlawful coercion and will be enjoined.

Now, gentlemen, that rule of law was laid down in two cases in this country involving manufacturers before any case was decided applying it to labor unions. In a case in Vermont the granite manufacturers and the wholesalers made an agreement whereby no manufacturer of granite could sell to any wholesaler or dealer in granite except only he was a member of the association—a closed-shop contract, pure and simple. Heavy fines and penalties were provided to enforce this agreement.

MR. PEARRE. What case was that? May I ask you, if you have the reference? [After a pause.] No matter, if you haven't it there.

MR. DREW. I want to read from the case, so I had better look it up now. The case is *Boutwell v. Marr* (71 Vermont, p. 1). I will read a report of a case which I made in a legal pamphlet I published some time ago. The defendants were members of the Granite Manufacturers' Association; plaintiff was a nonmember.

The association adopted by-laws and resolutions which prohibited dealings with members not in good standing and with any individual, firm, or corporation engaged in cutting, quarrying, or polishing granite in the State of Vermont who were not members of the association. Fines and penalties were provided for the nonobservance of these rules. Plaintiffs were solicited to join the association, and refused. The resolution was then enforced against them, and their business, which depended largely upon the patronage of the members of the association, was practically ruined. In other words, members of the association refused to sell them granite.

There was no evidence tending to show that the defendants made any attempt to compel persons not members of the association to withhold their patronage, and they insisted that they could not be made liable for simply withholding their own. The court answered that contention by saying that the members were not simply withholding their own voluntarily, but were compelled to withhold their

own in that particular case because of the fines and penalties, and that those fines and penalties were unlawful coercion. The court said:

It is clear that every one has a right to withdraw his own patronage when he pleases, but it is equally clear that he has no right to employ threats or intimidation to divert the patronage of another. If it be true, as a general proposition, that several may lawfully unite in doing so to another's injury, even for the accomplishment of an unlawful purpose, whatever each has a right to do individually, it by no means follows that the combination may not be so brought about as to make its united action an unlawful means. * * *

It may be true that if the defendants, acting independently of any organization and moved solely by similarity of interests and views, had united in withdrawing their patronage the effect upon the plaintiff's business would have been the same, and yet the defendants have incurred no liability. But in the cases supposed the united action would result from the free exercise of individual choice.

Without undertaking to designate with precision the lawful limit of organized effort, it may safely be affirmed that when the will of the majority of an organized body, in matters involving the rights of outside parties, is enforced upon its members by means of fines and penalties the situation is essentially the same as when unity of action is secured among unorganized individuals by threats or intimidation. The withdrawal of patronage by concerted action, if legal in itself, becomes illegal when the concert of action is produced by coercion. * * *

The fact that the members of the association voluntarily assumed its obligations in the first instance, so far as it be a fact, is not controlling. The law can not be compelled by any initial agreement of an associate member to treat him as having no choice but that of the majority nor as a willing participant in whatever action may be taken. The voluntary acceptance of by-laws providing for the imposition of coercive fines does not make them legal and collectible, and the standing threat of their imposition may properly be classed with the ordinary threat of suits upon groundless claims. The fact that the relations and processes deemed essential to a recovery are brought within the membership and proceedings of an organized body can not change the result. The law sees in the membership of an association of this character both the authors of its coercive system and the victims of its unlawful pressure.

In a case involving manufacturers, if you please, interests of capital and capital alone involved, an attempt upon these great business interests to establish a monopoly of the granite industry, did the courts hesitate? Did they discriminate? Not at all. They went to the heart of things, Mr. Chairman. And so the supreme court of Massachusetts, in the case of *Martell v. White* (69 *Northeastern*, 1085), made precisely the same ruling, involving the same thing.

This was an action of tort for conspiracy. Plaintiff was proprietor of a granite quarry. Defendants were members of a granite manufacturers' association. A by-law of the association imposed a fine upon any of the members doing business with any person not a member in any way relating to the cutting, quarrying, polishing, buying, or selling of granite. Most of the plaintiff's customers were members of the association. A number of them were fined for doing business with him, and thereupon his customers who were members ceased to deal with him.

In that case Mr. Justice Hammond said:

It may be assumed that one of the objects was to enable the members to compete more successfully with others in the same business, and that the acts of which the plaintiff complains were done for the ultimate protection and advancement of their own business interests, with no intention or desire to injure the plaintiff except so far as such injury was the necessary result of measures taken for their own interests. If that was true, then, so far as respects the end sought, the conspiracy does not seem to have been illegal. The next ques-

tion is whether there is anything unlawful or wrongful in the means used, as applied to the acts in question.

In the case before us the members of the association were to be held to the policy of refusing to trade with the plaintiff by the imposition of heavy fines, or, in other words, they were coerced by actual or threatened injury to their property.

It is true that one may leave the association if he desires, but if he stays in it he is subjected to the coercive effect of a fine, to be determined and enforced by the majority. This method of procedure is arbitrary and artificial, and is based in no respect upon the grounds upon which competition in business is permitted, but, on the contrary, it creates a motive for business action inconsistent with that freedom of choice out of which springs the benefit of competition to the public, and has no natural or logical relation to the grounds upon which the right to compete is based. Such a method of influencing a person may be coercive and illegal. Nor is the nature of the coercion changed by the fact that the persons fined were members of the association.

So, gentlemen, in the United States the principle that fines and penalties and forfeitures are unlawful coercion when brought to bear upon individual members of an association to compel their conduct in a matter which affected outside parties was established in cases relating to moneyed interests, to capital, to manufactures. The first case I know of involving this principle is an English case that arose between manufacturers, the case of *Hilton v. Eckersley* (6 El. Bl., 47; 88 E. C. L., 47), decided in 1885.

Mr. TIRRELL. How is this legislation you are discussing meeting any of those objections that you are raising?

Mr. DREW. The legislation that we are discussing—the Little bill—the latter part of the bill would do away with that principle of law as applied to unions—would nullify it. In this English case, decided in 1855, was involved the validity of a bond entered into by a number of manufacturers, in which they agreed to abide by the will of the majority for one year as to whether he should carry on or conduct or wholly or partially suspend carrying on his works or establishment for the time. The action was brought to recover upon the bond of one of the manufacturers. The defense was that the bond was in restraint of trade, illegal, and void. These manufacturers were combining against the laboring men.

Mr. PEARRE. You do not mean to contend that these unlawful combinations of which you speak have all been broken up in the United States. You cite those as decisions of courts, but how about the legal principle?

Mr. DREW. My point on that is this: That the courts had been absolutely impartial in applying these principles of law of which the unions complain, and that in the case of many of these principles as applied to the present conditions they have been applied and enforced and become recognized in cases involving moneyed interests—manufactures—before they were enforced in regard to labor unions.

It does away entirely with any claim on their part that the courts have discriminated against them or have created principles in order to assist the moneyed interests against them. There is absolutely no claim of that kind possible. The very origin of these principles and of these cases shows them to have been absolutely impossible. And I will say, to be brief, that in that case that combination among the manufacturers of England in 1855 was held to be void and unlawful. Now, gentlemen, that principle finally got around to be applied to labor unions.

Mr. PEARRE. Do I understand you to say that the provision of the Little bill and the bill I introduced are the same in regard to conspiracy?

Mr. DREW. Not exactly.

Mr. PEARRE. The Little bill requires the act conspired to be done must be a crime; the bill I introduced simply provides that it shall be unlawful. Is there not a distinction there?

Mr. DREW. Oh, yes.

Mr. PEARRE. Then, they are not the same?

Mr. DREW. No; I said as far as anything that I have said goes it will apply to both bills. I have not made any such distinction in my discussion as would apply to one bill and not to the other.

Mr. SPELLING. What case does that decide it in?

Mr. DREW. The case of Norcross Brothers v. The Bricklayers' Union, decided in the supreme court of Massachusetts in October of last year. In that case, Mr. Chairman—

Mr. FULLER. If it would not disturb the witness, with the permission of the committee I would like to ask him a question along the line suggested.

The CHAIRMAN. It was decided yesterday that it is not best to get into these controversies.

Mr. FULLER. Very well.

The CHAIRMAN. If we do it for one we have to do it for others, and it occupies too much time.

Mr. DREW. Now, gentlemen, I will say, to be brief, that in October of the year 1905 that principle was finally applied to labor unions by the supreme court of Massachusetts, and it was held that the coercion of the individual members of a union to observe the orders of their officers or committees by means of fines, penalties, and forfeitures was an unlawful coercion. Then, gentlemen, we begin to have the principle questioned, although it had been an active principle and never questioned as applied to manufacturers' associations.

Now, take another principle of which they complain more bitterly than any other. That is that the purpose of inflicting injury without legitimate object on the part of a combination is unlawful and a combination with such a purpose is a conspiracy. That principle, gentlemen, I dare say, has been applied to more cases involving moneyed interests and manufacturers' associations than it has to unions.

These principles have been applied by State courts, courts selected by the people, as well as our Federal courts, with practical unanimity.

So, gentlemen, it seems to come to this. No claim has been made that any of these principles are wrong, morally wrong, not right or fair. There is absolutely no room for any claim that they have been applied in a discriminating manner or that they were originated or hatched up by any of our courts for the purpose of oppressing labor combinations. They have been applied equally and impartially, have originated in many cases against combinations of capital. So, I say, why at this late day should they be questioned and why should Congress be asked to practically set them aside by positive legislation? Simply because they run counter to the purposes of the union to establish and foster a monopoly. Absolutely no other purpose whatever.

Mr. PEARRE. Do you think that is the only reason?

Mr. DREW. From my point of view I do not know of any other.

Mr. PEARRE. Do you know whether there has been any abuse of the power of injunction by the courts of the United States?

Mr. DREW. Gentlemen, we have had able lawyers representing the proponents of these bills. In one of the earlier hearings they attempted to bring before this committee some examples of the improvident use of injunction or of application of these principles. I remember that not one authenticated case of that character was produced or proved before this committee, and yet it is the most substantial thing that they could have shown here at this hearing.

Mr. PEARRE. If their allegations to that effect be true, would you think there should be some legal remedy, some modification of the court's power by Congress, if Congress has the power, or some limitation of the court's power in reference to the issuance of injunction, if the contention of the laboring men that in labor disputes the courts have discriminated against them and have injudiciously, improvidently issued injunctions. If that contention can be established, do you think it would be wise for this committee to report some sort of a measure to limit the court's power in the issuance of injunctions and try to make the issuance of injunctions more provident and less improvident?

Mr. DREW. I should say certainly, Mr. Chairman, if it can be shown that the courts of our country are lending their power to one class as against another class, to the moneyed interests as against the workmen or as against combinations of workingmen or as to combinations of manufacturers as against combinations of laboring men in such a way as to make the fight unequal and unfair as between parties, there certainly would be a remedy, there certainly should be a remedy, and if Congress had that remedy in its power to grant it should be granted; but I do not think our courts have——

Mr. PALMER. It does not follow that because some judge has behaved badly the law is wrong!

Mr. DREW. Not at all.

Mr. PALMER. Because the law has been abused by some judge, do you think you should change the law?

Mr. DREW. Not at all.

Mr. PEARRE. Do you not think that if judges get in the habit of maladministering the law you should change the law so that that would not be possible?

Mr. DREW. No; I would change the judge.

Mr. PEARRE. But you can not always do that.

Mr. DREW. Along the line of examples of wrong decisions of courts and partial and discriminating decisions, Mr. Gompers cited several. It appeared that in all of them he was mistaken as to the actual facts, as the records of the cases show, except one that I do not remember was commented upon. That was the case of the *United States v. Weber* (114 Federal, 950), in which I believe the parties convicted of contempt were afterwards pardoned by the President of the United States upon the recommendation of a commission. Mr. Gompers cited this case as an instance where the court below had erroneously and unfairly held the ultimate purpose of a labor union to be illegal. Now I will cite from the decision of the court as to the purpose of the union:

In the first place, it is hardly open to serious question that the purpose of the union is not legal. Its purpose is to secure control of mining operations, includ-

ing those under the management of receivers of this court. Confessedly control is desired for this purpose. If the union miners in some other State make complaint of grievance, the justness of the complaint is to be judged solely by the union. The union will be in a position to enforce compliance with their demands by ordering and carrying into effect a general strike. Can this court rightfully surrender control of the works under its charge to the United Mine Workers? It is clear that it can not.

Mr. PEARRE. The mine was in the hands of a receiver.

Mr. DREW. The exact distinction; that is the exact distinction in that case. The purpose of the union in that case was held illegal, not under general principles of common law, not under any principles we have mentioned, but under the old and established principles that a receiver of a United States court shall not be hampered in the administration of his trust.

Mr. PEARRE. That is entirely a different principle.

Mr. DREW. So that, gentlemen, disposes of the last case of an improvident issue of an injunction or of an unfair decision cited before this committee since these hearings began. No case whatever has been made along that line.

Mr. PEARRE. I could tell you of a dozen myself in my own section.

Mr. DREW. If the Congressman will pardon me, I think he ought to be a witness.

Mr. PEARRE. I live in a county that has 4,000 miners, Scotchmen and Welshmen, and they are excellent citizens, and I have known them to be repressed when there was not the slightest danger to property by injunctions, and the courts have reached the point in that matter when Judge Boyd, the chief judge of the fourth judicial circuit, in the last case that came before him refused to issue a restraining order without notice and without hearing.

Mr. DREW. If this were only a court now you could take judicial notice of that.

Mr. PEARRE. I am simply giving you the benefit of my knowledge; I thought perhaps you had a great deal, too.

Mr. DREW. I have been through quite a number of labor disturbances.

Mr. PEARRE. Those have come under my own observation.

Mr. DREW. None have come before this committee, and an attempt has been made to produce them, and the burden of proof is on the proponents to produce them. That is my statement on that point.

Mr. PEARRE. I am just giving you the benefit of my knowledge.

Mr. DREW. There is something still more significant in this, and that is the attitude of the general public toward this union programme I have outlined. The public are vitally interested in industry and all that pertains to industry; they are the great third party to all labor controversies. The public usually pays the freight in some form or other when the streets of the city are given over to violence and lawlessness; it is the good name and public welfare that suffers most of all. When third parties, members of the general public, as far as the particular controversy is concerned, are dragged into a controversy and made to suffer financial loss, then the general public is touched.

When mills are shut down by sympathetic strikes between parties having absolutely no interest whatever in the direct question at issue, then the general public suffers. Every one of these things

vitality interest the general public. Now, the general public after a while, after it has been rubbed in long enough, sits up and takes notice, and, gentlemen, the general public in labor matters is sitting up and taking notice all over our country.

In my section of the country—and that is the only section that I have personal knowledge of—our citizens' alliance, a bona fide institution of public-spirited men of all professions and classes, represents in its membership substantially all of the leading interests of our city—that is, the men of influence, the men of weight and opinion. During the strike in Saginaw and Bay City last summer, a street-car strike, the violence and the lawlessness got to such a point that policemen would advise you to stay off the cars instead of riding, the mayor of the city would address union meetings, the common council of both cities passed resolutions rescinding the charters of the street railroad company and resolutions of sympathy with the strikers, cars were overturned in the heart of Bay City with policemen looking on; murder was actually committed there—

Mr. PEARRE. Do you want injunctions to prevent those things? Was there not ample law?

Mr. DREW. As I advised you, the policemen advised us to stay off the cars. The policemen were actually spectators.

Mr. PEARRE. That is, as Mr. Palmer said a while ago, you needed new policemen and better ones.

Mr. DREW. They needed something else, Mr. Pearre; they needed an intelligent public sentiment. I went to the city of Saginaw. I got together a few men—three lawyers and one business man—and we discussed the situation and decided to form an organization.

That night we had eight men; the next night we had 35 men; the next night we had 135 men; the next night we had 300 men, and inside of a week over a thousand men in the city of Saginaw—lawyers and doctors and merchants, men who were tired of the attitude of the public officials, men who were tired of the destruction of the fair name of their city by such lawlessness and violence.

Mr. PEARRE. For what purpose were they organized?

Mr. DREW. To enforce law and order, and to see that it was enforced.

Mr. PEARRE. Exactly; but not by injunction.

Mr. DREW. They were organized to give sufficient backing to the local circuit judges, so that they would dare issue an injunction.

Mr. PEARRE. Was not the main purpose to enforce law?

Mr. DREW. An injunction was issued in Bay City, and it had an immediate effect. It was issued there before the alliance was organized, and the alliance was later organized in Bay City and assisted materially in generally quieting the situation.

Mr. PEARRE. But you first organized this vigilant committee, or whatever it might be called, to enforce order, did you not?

Mr. DREW. As a permanent organization.

Mr. PEARRE. But its primary purpose was to secure order?

Mr. DREW. The basic principles and the declaration of principles that every man signed said that the Citizens' Alliance of Saginaw stands for the open shop; it opposes the boycott and the blacklist; it opposes all forms of violence, lawlessness, threats, intimidation,

and coercion; it opposes the sympathetic strike and the lockout. That is what that declaration of principles said and what we organized for.

Mr. PEARRE. Don't you think that is an evasion of my question?

Mr. DREW. No; you asked me what was the purpose of their organization, and I stated their declaration of principles.

Mr. PEARRE. As a matter of fact, as you explained the circumstances, were they not organized as a committee to reestablish order first and foremost?

Mr. DREW. Certainly.

Mr. PEARRE. Was not that the purpose?

Mr. DREW. Yes; because that was the direct and crying need.

Mr. PEARRE. To enforce the law?

Mr. DREW. Yes.

Mr. PEARRE. And to establish order by a body of men who connected themselves to enforce the law, but not by an injunction?

Mr. DREW. But you can not change over the functions of this association to that of a vigilance committee, pure and simple. The citizens' alliance executive committee has retained counsel. It took steps to stop the boycotting immediately. It goes into the courts whenever necessary to secure injunctions against boycotting, resolutions being printed in the public press. The citizens' alliance of Bay City did the same thing. On behalf of the citizens' alliance of Grand Rapids I have been compelled to go through three lawsuits involving these principles in the courts.

So I say, gentlemen, the public is vitally interested and concerned, and the public is sitting up and taking notice. At the last convention of the Citizens' Industrial Association in St. Louis, a national association composed of these local associations I have told you about, there were 478 delegates, representing every State and Territory in the Union, excepting Oklahoma and the Indian Territory.

Now, gentlemen, this programme has been condemned by well-settled principles of law. It is being condemned by an intelligent public sentiment all over our country, and as a last resort, gentlemen, the labor leaders have come to Congress.

They come to Congress asking—and I say it advisedly—asking not for a law for the public good, not for anything to do with the general public welfare; they ask no law at all, may it please this committee; they ask license; that is the true name of these bills. The case of these proponents should be this: That this legislation which they seek is fair and right, and that it is for the general public good. What is their case? As they have presented it here their case is this: That although it is class legislation, although it is intended for the benefit of one class of our country as against another class, yet that it is constitutional, technically constitutional.

As far as being fair and right is concerned, they make no case at all. As a substitute they demand—the head of the American Federation of Labor stood in the presence of this committee and said: "I demand; I have ceased to request; I demand." Technically constitutional, they say, and they demand it. Mr. Chairman, the words of Mr. Gompers before this committee are the truest expression which I can find of the typical spirit and attitude of these proponents of these questions—compulsion, coercion, carried even into the halls of

Congress, exercised upon the poor individual, the nonunion man, to get him into the union, exercised upon the individual unions to get them into larger associations, exercised upon the individual employer, exercised upon third parties who have nothing whatever to do with the question at issue, and, finally, may it please you, Mr. Chairman, brought before this committee in the shape of a demand coupled with a threat.

Mr. SPELLING. I do not like to be out of order, but I would like the gentleman to show that Mr. Gompers said anything of that kind. I am quite positive that he never said anything of the kind.

Mr. DREW. I am not going to take time to answer that, because every member of this committee will tell you that he said it. I will tell you what he said. He said: "Gentlemen of the committee, we have come before your committee for several Congresses now asking for some relief for the workingmen of this country; we have requested legislation at your hands; and I want to say to you that the workingman is getting impatient, he is getting tired of your delays, and I want to say to you that I demand this legislation, and that if we can not get it at this Congress there will be other Congresses, perhaps, which will have a fairer and a better spirit toward the workingmen of this country."

Substantially, gentlemen, that is what he said, and I leave it to the record to prove my statement. Coercion, intimidation! Why, gentlemen, it is second nature to them.

Now, gentlemen, I have attended several hearings of this committee; I have read the able address of Judge Spelling, delivered when I was not present, and I have listened in vain and searched in vain for some showing on the part of the proponents of this bill that this legislation is fair and right according to our simple, ordinary, primitive standards of life here in America. I have searched in vain for any showing or claim that there was any general public need of it. Not a word, not an iota of evidence, proof, or showing upon those points.

We have heard, instead, a long technical discussion that Congress could do it, that it was constitutional, the gentlemen making that argument seeming to assume that if Congress could do it, and they wanted it done, there was no further question to be solved. Gentlemen, in these hearings I have seen the proponents of these measures abandon position after position. I have seen them divided among themselves, and finally they have gotten the discussion of the situation into such chaotic shape that I do not know that they themselves can tell exactly what they want. But why this chasing from pillar to post, from the Gilbert bill to the Little bill and from the Little bill to the Henry bill and from the Henry bill to the Pearre bill; why?

If there was any crying public evil, anything that was right to be done, it should be a simple matter to frame legislation to do it. I will tell you why, gentlemen. It is because they are trying to do something inherently wrong and indefensible that they have been compelled to abandon position after position. You saw before you yesterday Judge Spelling, one of the ablest counsel of our country, an author of books, counsel for the American Federation of Labor, stand before this committee like a girl in a meadow pulling petals from a daisy and saying "He loves me, he loves me not," absolutely undecided, contradicting himself time after time.

Was it because he did not know the law, is it because he is not an able attorney? Not at all, gentlemen, it was because he was standing upon a shifting platform, standing for a principle that was wrong and indefensible, and no attorney, however able, can maintain a position of that kind.

What is the result; what is all this hearing boiled down? We finally have got the Pearre bill; that has the indorsement of the American Federation of Labor. Judge Spelling does admit, and I agree with him, that Congress can not confiscate property. Congress can do a lot according to these people, but they do admit that Congress can not confiscate property. And yet, in his bill, the only thing that his bill seeks to do, and the only thing they want to do by his bill, is to confiscate property. They are going to define it away.

Mr. LITTLEFIELD. Sort of denaturalize property or denaturalize business; make it innocuous and without value.

Mr. DREW (reading from bill). "And for the purposes of this act no mere right to continue the relation of employer and employee, or to assume or create such relation, with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property, or as constituting a property right."

And what does he say? He says: "Why, these things are not property. We simply say in the bill what is true generally now; these things are not property or property rights. We are not taking away anything from anybody; we are not confiscating anything." Gentlemen, the first thing they take away is the good will of the business. If there is any species of property in this country which is sacred, inviolate, protected by our courts and necessary to be protected, it is good will. Good will is to business what character is to an individual. Every court—State and Federal—announces the doctrine that good will is property, subject to contract, to be bought and sold and dealt with as any other species of property. Good will is the fruit oftentimes of a lifelong business life of character and integrity and fair dealing.

Good will does not pertain to a shyster; good will does not pertain to the unfair merchant and the fraud. Good will pertains to the honest, the upright, the man who by his integrity has won the confidence of his fellow-men, the man who by the genuineness of his article has won their trade, good will, and patronage. Those things, gentlemen, are good will, and this bill is aimed directly at that asset. It puts a premium upon dishonesty and fraud; it takes away in a twinkling of an eye the results of integrity and fair dealing or to carry on business of any particular kind. They say the right to carry on business is not a property right.

I am not going to cite any authorities on that, because there are lawyers upon this committee. The right to assume or create the relation of employer or employee, gentlemen, has become an established doctrine of our courts, mainly at the instance and behest of laboring men themselves that labor is a commodity to be bought and sold in the open market like any other commodity, and that the right to buy and sell it is a property right, like any other property right, to be protected by our courts. So I say to you that this bill confiscates property, and not only confiscates property but confiscates the highest

kind of property—confiscates the kind of property which is most essential to our business institutions and to our continued progress and prosperity. As well attack our system of credit as to attack the good will of our business institutions.

I was going to say something about the constitutionality of some of these things, and I left it to the last because I anticipated that somebody would begin asking me questions if I mentioned it, but I have already taken so much time that I will only make one observation on the constitutionality of these measures, as far as they relate to depriving the courts of the power of issuing injunctions.

The word has been constantly used in describing what the function of Congress as regards the creation of courts, created. Now, I do not comprehend that Congress creates any inferior courts.

The Constitution says, if I remember correctly, that Congress shall establish and ordain inferior courts, but it does not use the word "create." Senator Bailey says what Congress can create and what Congress can destroy Congress can limit. So we have the inherent fallacy in the statement that Congress—

MR. DE ARMOND. Do you agree with that or not—that what Congress can create and what Congress can destroy Congress can limit?

MR. DREW. You will pardon me if I do not answer that, because from my point of view it is beside the question.

MR. DE ARMOND. Why did you mention it, then?

MR. DREW. I said because the word "create" I thought had been brought in, when it is not used—

MR. DE ARMOND. But why did you drag in Senator Bailey and quote what he said?

MR. DREW. Simply to illustrate what I said, and I will withdraw that—

MR. DE ARMOND. But why did you do it, then; why did you put that in?

MR. DREW. The reason I took that stand—

MR. DE ARMOND. You did not take any stand. You put it in and now decline to answer about it.

MR. DREW. I say the Constitution authorizes Congress to establish and ordain inferior courts, and not create them, and I thought a great deal of the cloudiness in the preceding discussion arose from the fact that the term "create" had been used instead of "ordain and establish."

MR. DE ARMOND. Then you prefer not to answer my question as to whether you agree with what you quoted from Senator Bailey or not?

MR. DREW. I do not concede Congress can create, so far as that is concerned.

MR. DE ARMOND. Is your reason for declining to answer the question because you consider it immaterial?

MR. DREW. I do not decline to answer it so much as I say that I would like to confine myself to the point I am discussing.

MR. DE ARMOND. That is answering as I said a moment ago, that it is immaterial.

MR. DREW. I will let that answer stand, then.

MR. DE ARMOND. Let me ask you another question, then. What is the difference between creating a court and establishing a court?

MR. DREW. That continues me along in the line that I have considered.

MR. DE ARMOND. I am very glad to have you continue there.

Mr. DREW. As I said, I was going to make only a short reference to the question of constitutionality, but it seems to me that if instead of the words "establish and ordain" we just say "plant."

Mr. DAVENPORT. The word is "constitute," is it not?

Mr. DE ARMOND. Don't interfere with that, because he is working on the word "ordain" now. The mere fact that in the Constitution there is a different word ought not to interfere with your argument as you are making it, or the gentleman to impair it as you are making it, either.

Mr. DREW. Well, since we are in for it, I will say that all power comes from the people. The power of the people to govern themselves is expressed in three departments—executive, legislative, and judicial. Neither department has any of the functions, attributes, or qualities of the other.

Following that line of reasoning, in my judgment Congress has no judicial power. Having no judicial power, I can not see how it can create it. Judicial power, however, may have been given into the hands of Congress as a trustee, or as in escrow, to pass on to certain courts which it may establish and ordain. Now, it would seem to me a good comparison to take the gardener and his seed, this being spring-time and the time for planting. The seed we will call judicial power. The seed has in it certain qualities and attributes which enable it when planted in the ground to germinate, grow according to its kind, and bear leaf and foliage and flower.

The gardener can not add to that seed any of those attributes; he can not change the kind of flower which will grow upon the plant: he can not do anything to that seed except to plant it or to withhold planting it. If he puts it in the ground it must grow according to its nature, the nature that God gave it, may it please you, Mr. Chairman. After it has grown, if he sees fit he can lop it off, he can trim its branches, he can cut its flowers; but the seed must grow according to its kind and according to the inherent qualities and attributes which it had before he planted it.

Now, the Constitution of the United States has created the seed of a system of courts, has given them judicial power, has handed the seed to Congress to plant where it would; wherever there is a waste place where judicial power should grow and flourish Congress can plant this seed. And after it has grown it can lop off the branch, if it will, or the trunk, but it can not change the character of the seed or the kind of blossom or leaf. That is the nearest expression I can get to the distinction between creating and merely establishing and ordaining.

Mr. DE ARMOND. You have not any legal authority bearing on that particular question?

Mr. DREW. I do not know of any legal authority—

Mr. DE ARMOND. I am not disposed to dispute that.

Mr. DREW (continuing). Applying these constitutional questions, or discussing them, rather, in a case at all similar to the present one. It is one of the rules of our courts that every case must in large measure depend upon its own merits, and even though there were some precedent I should say that if there were class legislation like this—class legislation pure and simple—proposed to them, and the incidental question involves whether or not Congress could do these things constitutionally, that the courts might be disposed to take a different view.

Mr. DE ARMOND. Is it your view that when Congress establishes a

court it can do nothing at all about what the court may do—has no control over it at all?

Mr. DREW. In cases of procedure I think it is generally conceded among all attorneys that to a certain extent Congress can regulate procedure.

Mr. DE ARMOND. What is the issuing or failure to issue an injunction; is that procedure?

Mr. DREW. Well, able attorneys upon the one side have said that it is procedure. Able attorneys upon the other side have said that it is inherent in the power of courts and absolutely essential to the exercise of their jurisdiction, and therefore is one of the attributes that the gardener can not change in the seed.

Mr. DE ARMOND. Would you venture to state what your conclusion upon it is?

Mr. DREW. My conclusion upon the point is this: That with two distinguished Senators on one side and one distinguished Senator upon the other, in the Senate, in a situation involving a somewhat similar question, and with able attorneys upon the one side before this committee and able attorneys upon the other before this committee, there is at least a debatable question whether or not this proposed legislation is constitutional, and, in the language of our Supreme Court, it is a question of doubtful constitutionality. That is all the point I care to make on that.

Mr. DE ARMOND. Does the Supreme Court say that in reference to this matter?

Mr. DREW. I believe in one of the cases cited by the gentleman from Chicago, Mr. Tenney, our Supreme Court was quoted as saying that Congress should be very slow to enact measures of questionable constitutionality.

Mr. DE ARMOND. That does not bear on the proposition; that is not saying that this would be of questionable constitutionality or that it would not be of questionable constitutionality; it is not saying anything about this particular matter, is it?

Mr. DREW. I say this question is one of doubtful constitutionality.

Mr. DE ARMOND. Then I understand your authority is to the effect that the Supreme Court thinks that Congress should be careful not to enact a law of doubtful constitutionality?

Mr. DREW. I leave the Supreme Court out of the question and say that this proposed legislation is at least of doubtful constitutionality, and greatly increased the burden of proof upon the proponents of the measure that it is absolutely needed at the present time, which showing they have not made at all.

Mr. DE ARMOND. Then you do not wish to be understood as saying that the Supreme Court has said that this legislation or legislation like this would be of doubtful constitutionality?

Mr. DREW. Oh, not at all.

I thank you, Mr. Chairman and gentlemen, for your courtesy.

STATEMENT OF HON. WILLIAM W. DUDLEY, OF THE FIRM OF DUDLEY & MICHENER, REPRESENTING THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY.

Mr. DUDLEY. Mr. Chairman, I was not present at the hearing on the 12th when Mr. Spelling was heard, but I have the stenographic report of his argument, and from it I wish to draw, if I may, the

objects and the reasons which have induced these organizations of labor to send their counsel here not only to promote legislation but to prepare the absolute language of legislation and present it to this committee as their ultimatum.

Mr. Spelling, in his statement on the 12th, makes this statement. Being asked whether he intends to include in his presentation of the case the bills introduced by Mr. Gilbert, Mr. Henry, and those pending before the committee, he says:

I shall speak upon what the Federation of Labor demands and seeks in legislation before Congress, and it is all embodied in the bill which I have here.

(Reading further from the printed hearing):

Mr. GILBERT. This, then, is a substitute for the Gilbert bill, or the Little bill, or any other bill which may be pending here referring to the question of injunctions.

Mr. SPELLING. Yes, sir; for everything. And to save time I might as well read it.

Again he says, on page 22 of the hearing:

Now, gentlemen, what is this question? It is a great political question. Of course I do not mean a partisan question. It is a question that reaches further and wider and deeper than any other question of this day, except, perhaps, the question of monopoly, and I am not here to discuss that. We are away behind the times in this country. England learned a lesson at the close of the Boer war that we would do well to profit by, etc.

And he says, after quoting from some of the English members, I presume —

I have here a clipping which is copied from the press dispatches of two weeks ago. It was the same in all the papers, substantially. It is as follows:

"LONDON, March 30.—The Government has surrendered to the Labor Party on the trades disputes bill. Premier Campbell-Bannerman himself announced in the House of Parliament this afternoon that he would support the bill introduced by the Labor Party in opposition to the Government's measure."

And then he very significantly states:

They have 54 members of the union in parliament.

Now, I want simply to say, in commenting upon these remarks of Mr. Spelling, that we are informed by their authorized representative before this committee of Congress that the labor unions of this country propose to do what the labor unions of England have done—they propose to have such legislation as they see fit to demand—and if they can not have it, then they will put a Congress here that will give it to them. In plain English, that is exactly what they say.

Mr. SPELLING. You mean that is your construction.

Mr. DUDLEY. No; I say that is your language.

Mr. PALMER. If they have a majority in Congress I do not see why they should not. My only criticism would be that they do not set up a man to run for Congress to represent their views.

Mr. DUDLEY. What I object to, Mr. Chairman and gentlemen of the committee, is this—

Mr. PALMER. Of course, I am not saying that I agree to their proposition, but I say that that is what I would do if I was in their place.

Mr. DUDLEY. Speaking for a large employer of labor, the time has come apparently when the tail seeks to wag the dog, rather than that the tail should be wagged by the dog, and here we have a small portion of the whole people of the country who have organized themselves into a class and are seeking to wield a political power which shall operate as a demand and as a coercion upon this Congress, that

they shall have just such legislation as they desire, regardless of its constitutionality or regardless as to its effect upon the remainder of the community, and that is what I mean when I say that this is an attempt here, apparently, on the part of the tail to wag the dog.

I can not speak as intelligently upon these subjects as the gentlemen who have preceded me, because they come from an immediate contact in their respective localities, with the forces, the political forces, at work, and more especially these organizations who have assumed in their communities to dictate what shall be done and what shall not be done. I am entirely willing that labor shall take its proper share of the responsibilities of government, and I do not wish to be understood as arguing that they shall not; but I say that this committee at this time should regard such a demand as has been made here exactly in the same way as they would a demand from employers who would come here and seek to change existing law, and the law which has been the outgrowth of centuries, for the purpose of enslaving labor or putting some additional burdens upon labor.

I would say if I were a member of this committee that it is not constituted for any such purpose. It is created to enact laws for the benefit of all the people, for the greatest good to the greatest number, and not for the purpose of enacting such class legislation as would benefit a small portion of the community and work a disadvantage and an injury to the remainder of the community. I do not want to say a word—and I am not going to make a long argument on the subject—about the constitutionality of this kind of legislation, and I want to address myself sanely and directly to this question: "Has Congress the power under the Constitution to enact such legislation as is proposed in this bill?"

The provisions of the Constitution which relate to the constitution of courts are found, first, in article 1, section 8, defining the powers of Congress, which reads as follows:

Clause 9. To constitute tribunals inferior to the Supreme Court.

Clause 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.

Article 3, section 1:

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress shall from time to time ordain and establish.

Section 2:

The judicial power shall extend to all cases in law and equity arising under the Constitution and the laws of the United States.

The fifth amendment to the Constitution provides that "no person shall be compelled in any criminal case to be a witness against himself, nor be deprived of liberty or property without due process of law."

The fourteenth amendment, section 1, provides—

All persons born or naturalized in the United States and subject to the jurisdiction hereof are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

These are the constitutional provisions which, aside from those that guarantee a jury trial in civil cases, as well as criminal cases, control.

The proposition which I would assert is this: That the judicial power of the United States is one of the attributes of its sovereignty. The people of the United States are its sovereigns. They express their will through the Constitution of the United States, their written will, and all powers that are to be given to each of the three branches of the Government of the United States are named in the Constitution, and they derive that power from the Constitution and from it alone. The judicial power of the United States is an attribute of that sovereignty.

Now, the Constitution has undertaken to say where the judicial power shall rest and where it shall be vested. And what does it say? "The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress shall from time to time ordain and establish," under its power, under clause 9 of Article I, section 8, "to constitute tribunals inferior to the Supreme Court," it seems to me. When, therefore, Congress, under this power to constitute tribunals inferior to the Supreme Court, has constituted a tribunal inferior to the Supreme Court, or, in other words—the words of the Constitution—ordained and established it, not by the act of Congress, but *eo instanto*, *ex propria vigore*, if you please, that power vests, just as it does in the Supreme Court, in that inferior court, if duly established. That judicial power is not a function of Congress.

Congress simply creates the means for the exercise of the judicial power. Having constituted the court inferior to the Supreme Court of the United States, the Constitution vests that judicial power, and it vests all of the judicial power—it is not vested in fractional parts.

Mr. PARKER. Under the statutes there is a distinction made between the district courts and the circuit courts, with certain jurisdiction to be given to the district courts and certain jurisdiction to be given to the circuit courts.

Mr. DUDLEY. That is jurisdiction; I differentiate between judicial power and jurisdiction.

Mr. PARKER. Then I will say certain judicial power is given to district courts in criminal cases and in cases affecting the revenue, while in other cases as between private parties, and in many other cases, it is given to the circuit courts. I call your attention to that, so as to see whether you would like to modify what you have said.

Mr. DUDLEY. I take this position, that the judicial power once vested in a court created by Congress inferior to the Supreme Court has all the judicial power that the Supreme Court of the United States has.

Mr. PARKER. Over that class of cases, you mean?

Mr. DUDLEY. It has that power; the power is vested. Now, how shall it be used; how may it be used; by what instrumentality?

Mr. PARKER. What you mean to say, then, is that while Congress gives certain classes of cases to certain courts, those courts have full judicial power in those cases; that full judicial power is vested in them under the Constitution?

Mr. DUDLEY. It says in exact terms that "the judicial power shall extend to all cases in law and equity arising under the Constitution and laws of the United States."

Mr. DE ARMOND. Does it say that all the judicial power shall extend to each one of the courts?

Mr. DUDLEY. I can not see how you can make anything else out of it.

Mr. DE ARMOND. It does not say that.

Mr. DUDLEY. Here is a provision providing for the exercise of that portion of its sovereignty. It says "the judicial power shall be vested in one Supreme Court and such other inferior courts as Congress shall from time to time establish and ordain," under its power to constitute courts inferior to the Supreme Court. Therefore it is conjunctive, it is not a disjunctive thing; it does not say "or," but it says "and," and that means a great deal in that connection. And the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts. Therefore the judicial power is an entity; it is not all in the Supreme Court.

They have it all; they have all the judicial power that is to be given under the Constitution, but there are other tribunals which may possess that judicial power, and they get it by express grant of the Constitution itself. How are they going to get their judicial power? Congress did not create the Supreme Court; that was created by the Constitution. Therefore it vests in Congress the power to create or to constitute these inferior courts—inferior to the United States Supreme Court—and they are equal so far as the judicial power vested is concerned; they are equally vested with the Supreme Court with judicial power. That is what I mean to say.

Mr. DE ARMOND. The Constitution does not create it; it provides for it.

Mr. DUDLEY. It has been conferred by that language of the Constitution.

Mr. DE ARMOND. Before these inferior courts were created, do you think all of the judicial power of the United States rested in the Supreme Court?

Mr. DUDLEY. That was the only means of the expression of that power up to that time.

Mr. DE ARMOND. When the first judiciary act was passed and some courts were created, do you think all of the judicial power then went into those courts in conjunction with the Supreme Court?

Mr. DUDLEY. I think it did; I think that is the fair intendment of the constitutional language.

Mr. DE ARMOND. Then Congress created some other courts. Where did they get their judicial power? If all the judicial power had already gone into the courts that had been established, where did the other courts that were established get their judicial power?

Mr. DUDLEY. I know you do not mean to put the question that way, because the power of the United States is not a bucketful of power or any determinate fraction of power; it is the sovereign power, the power of the sovereign people over the property and rights of its citizens, just as the king had that power and it was delegated to the proper tribunals. The power itself is a sovereign power. The point I make is, it is not divisible, not a mere bucketful of power; it is a full power; it is the soul of the judicial body or means of use.

Mr. PARKER. Do I understand your position to be this: That when Congress gives to a particular court jurisdiction over a particular class of cases, that after that jurisdiction is once given over that class of cases the control of the court judicially over each case can not be interfered with by Congress?

Mr. DUDLEY. Well, I do not think I quite subscribe to that proposition, but what I would like to be understood as saying is this: That Congress having constituted a court by its proper enactment and the members of such court having been appointed in conformity with the provisions of the Constitution, the judge or judges having been appointed, that court eo instanto is vested with the full judicial power of the United States.

Mr. PALMER. To do what, to hear and determine the class of cases over which the jurisdiction is conferred and to enforce judgments?

Mr. DUDLEY. Exactly.

Mr. DE ARMOND. In the manner provided by Congress.

Mr. PALMER. Well, as to procedure, but when you come to enforce a judgment, if you need an injunction to enforce, you have as much right to have an injunction as you have to have an execution.

Mr. DUDLEY. The judicial power of the United States is something that can not be defeated by any process.

Mr. PEARRE. I understood you to say that when under the Constitution Congress erects a court, that eo instanto that court has certain powers inherent of which it can not be deprived, except by amendment to the Constitution.

Mr. DUDLEY. You can not limit that power.

Mr. PEARRE. I say, that is what I understand you.

Mr. DUDLEY. You correctly understood me. You may abolish that court and then that power returns to the Constitution that gave it.

Mr. PEARRE. I wanted to see if I understood you correctly.

Mr. DUDLEY. But once a court has been created in accordance with the terms of the Constitution, constituted by Congress, ordained and established by Congress, as inferior to the Supreme Court of the United States, as it must be, that that court, until it is abolished by law, is in the exercise of the judicial power, just as much as the Supreme Court of the United States is; the soul of the judicial power is vested there; there it remains until it goes back to its creator, when Congress abolishes the court.

Mr. PARKER. But I suppose that Congress could take a certain class of cases away from that court, that it had given to that court.

Mr. DUDLEY. Oh, yes; but you can not go beyond what the Constitution says. It says that the judicial power shall extend to all cases in law and in equity.

Mr. PEARRE. As I understand the Constitution of the United States, it not only prescribes what the judicial power is but in what courts it shall be vested and also the jurisdiction.

Mr. DUDLEY. It takes for granted that the people of the United States know what that sovereign power is.

Mr. PEARRE. I understand you to contend that there is certain inherent power in the courts which inheres there and can not be abolished except by amendment of the Constitution.

Mr. DUDLEY. Yes; and while Congress in creating a court may limit its jurisdiction in certain regards, it can not limit the judicial power which has been vested there by the Constitution, except by an amendment of the Constitution. That has been adjudicated. I want to read you an early opinion on that subject:

Congress is bound to create some inferior courts in which to rest all that jurisdiction which under the Constitution is exclusively vested in the United States and of which the Supreme Court can not take official cognizance. It might establish one or

more inferior courts, and might parcel out the jurisdiction among such courts from time to time at their own pleasure; but the whole judicial power of the United States should be at all times vested, either in an original or appellate form, in some courts created under its authority. (*Martin v. Hunter*, 1 Wheat., —, U. S., — 331.)

That is in the terse language of Chief Justice Marshall.

Mr. PEARRE. Then I understand you to contend that this power of injunction—to issue an injunction—is one of those inherent powers?

Mr. DUDLEY. Yes, sir.

Mr. PEARRE. Which Congress cannot disturb?

Mr. DUDLEY. Yes; that is the position I take.

Mr. PEARRE. I wanted to understand you.

Mr. DUDLEY. Yes; and that any legislation which seeks to impair that power, or harness it, or limit it, is in violation of the principle of the fundamental law of the land.

Mr. DE ARMOND. Does not that opinion and the extract you have just read proceed upon the theory that Congress has not created tribunals with that complete power?

Mr. DUDLEY. I will not say positively, but I want to read further from that opinion, and that possibly answers your question. In the same case it is said: "The language of this article"—

He is speaking now of Article III, section 1, which provides that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish.

Section 2 provides, first—

that the judicial power shall extend to all cases in law and equity arising under the Constitution and the laws of the United States and treaties made or which shall be made under their authority; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State and citizens thereof and foreign states, citizens, or subjects.

"The language of this article," Chief Justice Marshall says, "throughout is manifestly designed to to be mandatory upon the legislature. If, then, it is the duty of Congress to vest the judicial power of the United States, it is the duty of Congress to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise this anomaly would exist, that Congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the Constitution, and thereby defeat the jurisdiction as to all, for the Constitution has not singled out any class on which Congress is bound to act in preference to others." (*Martin v. Hunter*, 1 Wheat., U. S., 328.)

Article I, section 18, provides, among the other powers of Congress, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any Department or officer thereof."

The plain import of the clause is that Congress shall have all the incidental and instrumental powers necessary and proper to carry into execution all the express powers. It neither enlarges any power specifically granted, nor is it a grant of any new power to Congress, but it is merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those otherwise granted are included in the grant. Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the power be express in the Constitution. If it be, the question is decided. If it be not express, the next

inquiry must be whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress can not exercise it.

(Story on Const., vol. 2, p. 140; Ex parte Curtis, 106 U. S. 371; 2 Elliott's Debates, 342; 4 Elliott's Debates, 225 and 227; Virginia Report and Resolutions, January, 1800, pp. 33 and 34.)

Neither can the degree in which a measure is necessary ever be a test of the legal right to adopt it. That must be a matter of opinion (upon which different men and different bodies may form opposite judgments), and can only be a test of expediency. The relation between the measure and the end, between the nature of the means employed toward the execution of a power, and the object of that power must be the criterion of unconstitutionality, and not the greater or less of necessity or expediency. If the legislature possesses a right of choice as to the means, who can limit that choice? Who is appointed an umpire or arbiter in cases where a discretion is confided to a Government? The very idea of such a controlling authority in the exercise of its powers is a virtual denial of the supremacy of the Government in regard to its powers. It repeals the supremacy of the National Government proclaimed in the Constitution.

(Story on Const., vol. 2, p. 143; McCulloch v. Maryland, 4 Wheat. (U. S.), 423.)

The fifth amendment and the fourteenth amendment to the Constitution guarantee to every citizen the equal protection of the laws.

But where only the legislative power is delegated to one department and the judicial to another, it is not important that the one should be expressly forbidden to try causes or the other to make laws. The assumption of judicial power by the legislature in such a case is unconstitutional, because though not expressly forbidden, it is nevertheless inconsistent with the provisions which have conferred upon another department the power the legislature is seeking to exercise. (Cooley's Const. Lim., 174 et seq.; Cooley's Const. Lim., 87 to 114 and cases cited.)

The Constitution of the United States was regarded by the statesmen who sat in the Federal Convention as so essentially limited as to require no express restraints beyond the few that were imposed in terms. The powers which it gave were confined to certain necessary objects, and therefore plenary so far as these were concerned; but they were to be exercised by a chief magistrate and representatives chosen by the people, who were not likely to deal hardly with their constituents. * * * The entire judicial power was vested in a "supreme court and such inferior courts as Congress might from time to time establish," and to be administered by judges who were to hold office for life and to be removed only on impeachment; and were the legislature so disposed no part of the power thus conferred could be taken from the judiciary and placed in tribunals constituted for the occasion, and composed of members appointed by the President as Commander in Chief, and liable to be dismissed at pleasure. Such was the rule as explicitly laid down in the grant of judicial power. (Hare's Amer. Const. Law, vol. 1, 504, 505; Am. Ins. Co. v. Canter, 1 Peters, 511, 546.)

It is emphatically the province of the judiciary to construe the Constitution; and when the judicial and the legislative construction of a constitutional provision conflict the judicial construction prevails.

(Marbury v. Madison, 1 Cranch (U. S.), 137; Brown Shoe Co. v. Hill, 25 South. Rep., 634; State v. Moores, 76 N. W. Rep., 175; State v. Parker, 29 S. E. Rep., 651; Smith v. Grayson Co., 44 S. W. Rep., 921; Cyclopaedia of Law, vol. 4, 737.)

The course of legislation will not be allowed to control the judiciary in its construction of constitutional provisions.

(State v. Cornell, 83 N. W. Rep., 72; Wanser v. Hoos, 38 Atlantic Rep., 449.)

Courts will declare void an act passed, even in the exercise of discretionary power, if it plainly violates the fundamental law of the State.

(People v. Allen, 42 N. Y., 378; Cyclopaedia of Law, vol. 4, 739.)

See Federal Statutes Annotated, volume 4, page 506, section 718, and cases cited. (Temporary restraining orders.) Also section 719 (Injunctions) and cases cited. Equity rules 55 and 93. 1 U. S. Sup. Ct. Rules, pages 49 and 63.

The constitution of the State of Indiana follows in exact terms that of the United States in the conferring of the judicial power.

Mr. GILLET. Does it not also provide for the forming of inferior courts?

Mr. DUDLEY. Yes; it follows the language exactly of the Constitution of the United States. The constitution of the State ordains "in circuit courts and such other courts as the general assembly may establish."

Mr. GILLET. Practically the same thing.

Mr. DUDLEY. Yes; practically the same thing.

In *Ex Parte Griffith*, 118 Indiana, 83, the general assembly of Indiana had passed an act, the purpose of which was to require the supreme court to perform many of the duties and functions rightfully belonging to the reporter, such as preparing the syllabi. The court held the act to be void, because it was in violation of the provisions of the State constitution, which required the court upon the decision of every case to give a statement in writing of each question and the decision of the court thereon, and also required the general assembly to provide by law for the speedy publication of the decisions of the supreme court. Those provisions, when read in connection with another section of the constitution which lodged the whole judicial power of the state in the courts, made the act in question unconstitutional.

In *State ex rel. Hovey v. Noble*, 118 Indiana, 350, the supreme court of Indiana held to be unconstitutional an act providing for the appointment of commissioners of the supreme court and directing the clerk of the court to turn over to that commission the records and papers in cases, so that the commissioners might study the cases, hear and consider arguments, and write opinions to be adopted by the supreme court.

The constitution of the State ordains that "the judicial power of the State shall be vested in a supreme court, in circuit courts, and in such other courts as the general assembly may establish." The court held that this provision vested in the courts the whole element of sovereignty known as the judicial, and that the people thereby gave to the court all the judicial sovereignty which they had to give. The opinion of the court is lengthy and it cites and discusses all of the principal cases up to that time.

The opinions in the two cases above named were written by Chief Justice Elliott, one of the three really great judges produced by the State of Indiana.

It will be observed that in the *Griffiths* case the legislature sought to add to the duties of the court, while in the *Noble* case the legislature endeavored to take from the court a part of its judicial functions and powers.

In *United States v. Klein*, 13 Wall., 128, 143-147, the Supreme Court of the United States held an act of Congress to be unconstitutional which provided, in substance, that an acceptance of a pardon without a disclaimer should be conclusive evidence of the acts pardoned, but should be null and void as evidence of rights conferred by it, both in the Court of Claims and this court. The decision of the Supreme Court was to the effect that the act considered was an invasion of the powers of the judicial branch of the Government, and therefore void. The opinion was written by Chief Justice Chase.

Where the constitution of a State expressly limits and defines the jurisdiction of a court, it is not within the power of the legislature by enactment to add to or increase that jurisdiction. Conversely, the legislature can not by enactment diminish or circumscribe the jurisdiction

granted or ordained by the constitution. (*Kent v. Mahaffy*, 1 Ohio St., 498; *Comrs. Crawford Co., Ind.*, 40 N. E. Rep., 1089; *Thigpen v. Aldridge*, 92 Ga., 563; *Campbell v. Campbell*, 22 Ill., 664; *Bryant v. People*, 71 Ill.; 1 *Spelling on Injunc.*, 2d ed., p. 6; 1 *High on Injunc.*, 3d ed., p. 36, sec. 42.)

Mr. GILLETT. Suppose that Congress during its first session had just established the circuit courts and district courts, would say that it does hereby establish a circuit court and district court, and that nothing further was said, no other legislation, would those courts have a right to try and determine cases?

Mr. DUDLEY. In law and in equity.

Mr. GILLETT. Without Congress conferring any further power?

Mr. DUDLEY. Yes; the Constitution gives them that power.

Mr. GILLETT. I am getting your idea whether it was necessary to extend to them authority—

Mr. DUDLEY. Here is what it says: "To all cases in law and equity arising under the Constitution and the laws of the United States."

Mr. GILLETT. And that would be the common law and the statute law?

Mr. DUDLEY. Yes. So I think that language covers all possible cases.

Mr. PALMER. Under the limitations prescribed by the Constitution the judicial power does not extend to all kinds of cases, but simply as it reads, as you have quoted it.

Mr. DUDLEY. Yes.

Mr. GILLETT. You think these inferior courts are on an even footing with the Supreme Court so far as judicial power is concerned?

Mr. DUDLEY. Yes.

Mr. GILLETT. And nothing can be enacted which will deprive them of that judicial power?

Mr. DUDLEY. That is my opinion.

Mr. GILLETT. And any act that does attempt to deprive them of such judicial power is unconstitutional?

Mr. DUDLEY. Yes, sir; but an act to define the powers of an inferior court, such as Congress has passed, and also the duties of the court and the method of procedure is within the power of Congress, but so long as the court exists which Congress has created or has constituted—ordained and established—inferior to the Supreme Court, so long is the judicial power vested in that court, and it is not for Congress to attempt to take any part of that power away.

Mr. GILLETT. Or do any act which would prevent it from fully exercising that power?

Mr. DUDLEY. Yes; that is the fundamental doctrine upon which this rests, I think.

Mr. PARKER. Did you cite one part of *Hunter* against *Martin*? Did you cite these words:

But even admitting that the language of the Constitution is not mandatory and that Congress may constitutionally omit to vest judicial power in the courts of the United States, it can not be denied that when it is vested it can be exercised to the utmost constitutional extent.

Mr. DUDLEY. That is so, I think, in the sense of jurisdiction, because if it is, as I claim, that judicial power is the soul of the whole judicial system and that you can not take it away when once vested, because there it rests—

Mr. PALMER. What do you mean by judicial power?

Mr. DUDLEY. I mean what the soul is to the body. If Congress were to create a new court to-day different from any we have—I will state the converse of the proposition. In the revision of the laws you have done away with the circuit court; you are going to have the district court and the appellate court. Now, the circuit court is done away with—

Mr. DE ARMOND. You refer to that business that some people have been working on for nine years?

Mr. DUDLEY. Yes.

Mr. DE ARMOND. Congress has not done that.

Mr. DUDLEY. Well, when Congress does it the circuit court then has no further vested power; the judicial power is not vested in it. That court is dead.

Mr. PALMER. I say that these words "judicial power" meant something when they were written there. What do you think they mean?

Mr. DUDLEY. I have tried to define it from the Constitution itself, but we have our different ways of expressing what we believe.

I believe this: That if you should constitute a new tribunal to-day, call it whatever you please, if it were not for the terms I have read from the Constitution, article 3, section 1, "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress from time to time shall ordain and establish"—if it were not for that language, you would have to give that tribunal a new power, something unknown, that does not flow from the Constitution itself, and then it would simply be a commission, not a court.

Mr. PALMER. That is not exactly the idea. The Constitution vests legislative power in Congress; that means one thing. It vests judicial power in another branch of the Government; that is another thing. What did they mean? What is judicial power?

Mr. DUDLEY. It is power to hear and determine and to try causes of the people and to execute justice.

Mr. PALMER. And to enforce their judgments?

Mr. DUDLEY. Yes, sir; and to enforce their judgments. Mr. Brown suggests a brief definition: "To hear and determine every judicial case that may come before it;" under these terms, however, "arising in law and in equity."

Mr. DE ARMOND. Is that judicial power, in your view, subject to increase or diminution from the time of the adoption of the Constitution up to now?

Mr. DUDLEY. No, sir.

Mr. DE ARMOND. You find out, then, just what those terms meant when the Constitution was adopted, and they are fixed and crystallized into that meaning for all the rest of time.

Mr. DUDLEY. They were defined by the court at that time, as I have read to you.

Mr. DE ARMOND. I know; I was trying to get at your understanding of that proposition, and it is, that just what judicial power meant then it is bound to mean in all succeeding time, even if this Government were to exist for twenty centuries.

Mr. DUDLEY. I think so; so long as we adhere to our present Constitution. If, in the sovereign will of the people, they should see fit to make a new Constitution and change those provisions and it should

be properly adopted by the people, then of course the new order of things would prevail, but so long as this Constitution is the ruling and governing power of this land and so long as it is the charter of our liberties and our rights, as it is to-day, and is sacred, we must abide by its behests, and one of those is that the judicial power shall be vested not only in the Supreme Court, but other courts inferior thereto.

Mr. DE ARMOND. Then, if I understand you, it is utterly impossible for Congress to add to the judicial power of the courts anything beyond what the judicial courts of England possessed at the time of the adoption of our Constitution.

Mr. DUDLEY. No; I would say what the terms of the Constitution gave.

Mr. DE ARMOND. I am talking about that. You go to the courts of England to get the definition of that, if I understand you.

Mr. DUDLEY. But the entire judicial system has grown up from centuries of the exercise of judicial power.

Mr. DE ARMOND. What I would like your opinion about is this: Is that fixed and stereotyped there, so that what it meant, when adopted, is what it must mean always, or can it mean more or less?

Mr. DUDLEY. If we do not change our Constitution, it means just what I have stated.

Mr. DE ARMOND. What it meant at the time of the adoption of the Constitution?

Mr. DUDLEY. Yes, sir.

Mr. DREW. Referring to just what was meant by judicial power, did I understand you to state at the outset that the Constitution vested the judicial power of the whole people—that is, the judicial power mentioned in the Constitution—is the judicial power of the people of the United States?

Mr. DUDLEY. Exactly.

Mr. DREW. Not to the common law of England, or anything of that kind?

Mr. DUDLEY. It is just what we have made it by our political action in years past, what we have made it, and what we have sustained it to be and what our courts have made it and interpreted it.

Mr. DE ARMOND. If I understand, now, if you adopt the suggestion of Mr. Drew, you have remitted it to the people of the United States to determine from time to time what the judicial power of their courts shall be.

Mr. DUDLEY. Oh no; they may determine it by changing their Constitution, but in no other way.

Mr. DE ARMOND. Then you have not adopted his suggestion, as I understand it?

Mr. DUDLEY. Then I did not understand that his question went that far, namely, whether it was not the judicial power of the whole people, the sovereign people.

Mr. DE ARMOND. Yes, the judicial power—

Mr. DUDLEY. Acting in their sovereign capacity—

Mr. DE ARMOND. Whether there is anything in the Constitution that prevents the people, through Congress, from enlarging or decreasing that power.

Mr. DREW. I think you could do it by constitutional amendments, but not through legislation. The people could not place any limitation on that judicial power by the legislative department.

Mr. DE ARMOND. In other words, the people tied themselves up to just exactly what was meant by those terms at that time, and the only way they could escape from it, either in the way of enlarging or diminishing that power, would be by amending their Constitution.

Mr. PALMER. The converse would be that if Congress could take part of the judicial power away they could take the whole of it away and abolish the whole judicial system.

Mr. DUDLEY. It is one of the bulwarks of our system. I am trying to give you my construction of the Constitution in regard to this particular matter. I would say in passing, as reminded by Mr. Brown, that the Supreme Court have stated in one of their decisions that the equity power of the court, as that portion of the judicial power, has descended to us from the chancery practice of England, and we are practically carrying out that policy; but it is, all the same, the judicial power, and that is only one phase of it, one feature of it.

I take it, as I said before, that the judicial power is to the body politic of the United States what the soul is to the body, and that when you have destroyed the body, the means of its exhibition, it is not destroyed, but it flows back to the source from which it came and is to be reinvested by the terms of this Constitution in any other court which Congress shall see fit to establish, under your constitutional powers, and give it jurisdiction and means of procedure.

Mr. DE ARMOND. If it does not interrupt you, Mr. Fuller wanted to ask you this question:

Do your constitutional objections extend to the bills which provide for notice and for jury trials in certain cases of contempt?

Mr. DUDLEY. I want to be understood in answer to that question as advocating this proposition: That, clothed by the Constitution with the judicial power, the court in its discretion must determine whether or not a state of facts, which may be made apparent to the court, will justify the court in issuing an injunction or temporary restraining order without any notice.

Mr. BROWN. That was the law of England at the time of the adoption of the Constitution.

Mr. DUDLEY. Yes. There are also circumstances and facts which may arise which would convince the court that notice was proper, and it is always given, in my opinion, and I want to call your attention to a case cited here. In a general way I want to say this: That while gentlemen have cited some cases, they have not taken those cases from those decided by the Supreme Court. Most of those cases have not been taken to the Supreme Court of the United States but they were simply the decisions of inferior courts and not those of the highest court of the United States. I believe, without any exception so far as the cases cited are concerned, as I now recall them, they are cases decided by the inferior courts.

Mr. SPELLING. Do you refer to the cases I cited?

Mr. DUDLEY. I was not present when you spoke and so I can not say; but so far as I am advised, I will put it that way.

Mr. SPELLING. Not only that, but I cited the dissenting opinions, because I claimed the decisions were wrong.

Mr. DUDLEY. The bulwark of our liberties is the Supreme Court of the United States, and we can stand upon their construction of the law, and if they think an inferior court's decision is wrong in the matter of an injunction they will reverse it.

Mr. SPELLING. But I cited those and stand by them; I cited others and criticised them.

Mr. FULLER. In reference to my question, I do not understand General Dudley to say whether or not his constitutional objections extend to these bills which provide notice before an injunction can be issued, and those which provide for jury trials and certain cases of contempt.

Mr. DUDLEY. In answer to that question I will simply say that my objection extends broadly and fundamentally to all this class of legislation.

Mr. FULLER. To all these bills before the committee?

Mr. DUDLEY. All legislation that seeks to impair the judicial power of the court to issue injunctions.

Mr. FULLER. Including those bills I suggest?

Mr. DUDLEY. Yes; I think all of them are iconoclastic in their nature; they tend to tear down the well-established doctrines of law. If you will allow me I would like to read, in conclusion, one citation from Blackstone's Commentaries, volume 3, page 443:

But if an injunction be wanted to stay waste or other injuries of an equally urgent nature, then upon the filing of the bill and a proper case supported by affidavits the court will grant an injunction immediately, to continue till the defendant has put in his answer and till the court shall make some further order concerning it; and when the answer comes in whether it shall then be dissolved or continued till the hearing of the cause is determined by the court upon arguments drawn from considering the answer and affidavits together.

That is pretty old law and pretty good law.

Now there is nothing else I believe that I desire to say to the committee, and I will leave my brief with you.

(Thereupon at 1 o'clock the committee adjourned.)

AFTERNOON SESSION.

The committee reconvened, pursuant to the taking of recess, Hon. John J. Jenkins (chairman) in the chair.

STATEMENT OF MR. DANIEL DAVENPORT, OF BRIDGEPORT, CONN.

Mr. DAVENPORT. While the committee is waiting for a quorum there are one or two points which I have looked up somewhat that I would be glad to lay before the committee for their consideration and for the consideration of those who advocate these different kinds of bills.

Let me call the attention of the committee in the first place to two points connected with this last production of Mr. Spelling. This substitute bill offered by Mr. Spelling differs, of course, entirely from the Little bill or the old Grosvenor bill, as we called it, which was drawn, as I understand it, by Jackson H. Ralston years ago, after the Chicago strike of 1894. That is expressly limited in the first place to matters between persons engaged in interstate commerce. The committee is undoubtedly familiar with the bill. It reads as follows:

That no agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the District of Columbia or in any Territory of the United States, or between employers and employees who may be engaged in trade or commerce between the several States, or between any Territory and another, or between any Territory or Territories and any State or States or the District of Columbia, or with foreign nations or,

between the District of Columbia and any State or States or foreign nations, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy for which punishment is now provided by any act of Congress, but such act of Congress shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained.

That has always had the backing here of the American Federation of Labor. It was drawn by a distinguished lawyer.

Now they come with another one, drawn by Mr. Spelling, to which I invite the attention of the lawyers on this committee, as to its terms. It reads:

That no restraining order or injunction shall be granted by any court of the United States, or a judge, or by the judges thereof, in any case between an employer and an employee, or between employers and employees, or between employers, or between employees, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers or involving or growing out of a dispute concerning terms or conditions of employment, except upon at least five days' personal notice to the person or persons against whom such restraining order or injunction is applied for, definitely and specifically naming and describing each and every person and act sought to be restrained or enjoined; nor shall any such order or injunction be granted unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant, or by his, her, or its agent or attorney. And for the purposes of this act no mere right to continue the relation of employer and employee, or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

SEC. 2. That in cases arising in the courts of the United States or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, shall constitute a conspiracy or other criminal offense or be punished or prosecuted as such, nor shall the carrying out of any such agreement be restrained or enjoined unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual, nor shall the carrying out of any such agreement be restrained or enjoined unless such act or thing when done would be of the character described in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Now, the committee will notice that this law is general in its application; that it covers all matters.

I want now to direct the attention of the committee to the very patent fact that that one thing makes this law unconstitutional under the decisions of the Supreme Court of the United States; and in support of that I merely desire to direct the attention of the committee to the decision of the Supreme Court in the Trade-Mark cases. This proposed act being general and comprehensive enough to include within its terms all conspiracies, all matters covered by it wherever they arise, and in connection with whatever business, whether interstate commerce or not, so long as they are within the terms of the law, and not being limited to anything that is within the special jurisdiction of Congress, it is of course unconstitutional for that reason.

To refresh your recollection a little upon that subject I direct the attention of the committee to what the court said in the Trade-Mark cases. (100 U. S., p. 82.) You will remember that they held that law unconstitutional for this very reason (reading):

As the property in trade-marks and the right to their exclusive use rests on the laws of the States, and, like the great body of the rights of person and of property, depend on them for security and protection, the power of Congress to legislate on the subject, to establish the conditions on which these rights shall be enjoyed and exercised, the period of their duration, and the legal remedies for their enforcement, if such power exist at all, must be found in the Constitution of the United States, which is the source of all the powers that Congress can lawfully exercise.

Then they took up the various clauses of the Constitution which conferred that power, one, the power to promote the progress of science and useful arts, and so forth, and they held that that did not apply. Then they said that if it was to be based upon the power to regulate commerce between the States, that presented another question, and they would not undertake in that case to decide whether Congress had the authority to cover the subject; but passing that by they said:

Governed by this view of our duty we proceed to remark that a glance at the commerce clause of the Constitution discloses at once what has been often the subject of comment in this court and out of it, that the power of regulation there conferred on Congress is limited to commerce with foreign nations, commerce among the States, and commerce with the Indian tribes. While bearing in mind the liberal construction that commerce with foreign nations means commerce between citizens of the United States and citizens and subjects of foreign nations, and commerce among the States means commerce between the individual citizens of different States, there still remains a very large amount of commerce, perhaps the largest, which, being trade or traffic between citizens of the same State, is beyond the control of Congress.

When, therefore, Congress undertakes to enact a law, which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations, or among the several States, or with the Indian tribes. If not so limited it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress.

Having shown that the language was applicable to all, they took up this question, which naturally occurs to every lawyer on this committee, whether it may not be said that as it covers all it naturally covers any part, so that it would be good as to the part with which Congress concerns itself. They said:

It has been suggested that if Congress has power to regulate trade-marks used in commerce with foreign nations and among the several States, these statutes shall be held valid in that class of cases, if no further. To this there are two objections: First, the indictments in these cases do not show that the trade-marks which were wrongfully used were trade-marks used in that kind of commerce. Secondly, while it may be true that when one part of a statute is valid and constitutional and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable so that each can stand alone, it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body. This precise point was decided in *United States v. Reese*, 92 U. S. 214. In that case Congress had passed a statute punishing election officers who should refuse to any person lawfully entitled to do so the right to cast his vote at an election. This court was of the opinion that, as regarded the section of the statute then under consideration, Congress could only punish such denial when it was on account of race, color, or previous condition of servitude.

It was urged, however, that the general description of the offense included the more limited one, and that the section was valid where such was in fact the cause of denial. But the court said, through the Chief Justice: "We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is constitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not there now. Each of the sections must stand as a whole or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. * * * To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty." If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do—namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold in some instances under the act of Congress and in others under State law.

I make this specific point against this deviation from the programme heretofore propounded and advocated by the American Federation of Labor, that, for the reasons pointed out in that decision, the law now asked for or requested by them, or, as we are accustomed to hearing in these days, "demanded," would be invalid on that account.

The second noticable difference which is observable between the production of the eminent attorney who formerly represented the American Federation of Labor and that of their present representative is this—to which I by my inquiry yesterday directed the attention of the author of it—that it assumes by act of Congress to declare that to be not property which by the laws of every State in the Union—I state it without qualification—is property within the meaning, or, as the term is used, in legal and equitable proceedings, and under the recognized system of jurisprudence in force in this country. In my question to Mr. Spelling I embodied as confirmatory of the assumption the language of the supreme court of Pennsylvania. I was quoting from a case decided there within a few months—the case of *S. G. Purvis & Co., plaintiffs, v. Local No. 500, United Brotherhood of Carpenters, et al., defendants*, decided within a few months. This opinion was rendered by Justice J. Hay Brown, Monday, March 19, 1906.

This was a case which brings up this very subject about which we are now interested. *Purvis & Co.* refused to unionize their shops or to employ only union men. They were contractors and builders, and because they would not do it they instituted a regular boycott against them, and the scheme was to go to people and say: "Now, if you trade with those people, why, we will not work for you, and we will not work upon any building that any of that concern's stuff goes into;" and they pursued the usual course in regard to it. The court found the facts to be as I have stated; and, mind you, this was not one of these inferior, disreputable Federal courts, according to the theory of the gentleman, but it was the highest court of the great State of Pennsylvania. And the same doctrine is laid down in all the States. They held that that was an actionable conspiracy.

MR. SPELLING. Are the judges elected in Pennsylvania?

MR. DAVENPORT. I believe they are.

MR. PALMER. They have a twenty-one-year term of office.

MR. DAVENPORT. The great thing about this is that in most of the States of the United States where the judges are elected, and many of

them only for short terms, still, to their immortal honor, these fundamental principles have been applied and established by them, so that you might as well undertake to tear down this capitol as to undertake to destroy the laws of the several States upon this subject.

Mr. BIRDSALL. How does this bill do that?

Mr. DAVENPORT. It declares that this is not property.

Mr. SPELLING. This is the only decision that I ever heard of that decides that way.

Mr. BIRDSALL. It does not declare that as a general proposition, as I take it, except in this class of cases.

Mr. DAVENPORT. I understand that; but it does it in this class of cases. In other words, Congress undertakes to declare that some thing is not property which by the laws of all the States is property.

Mr. BIRDSALL. For the purpose of controlling the powers of the courts in the issuance of injunctions?

Mr. DAVENPORT. Yes; in all civil matters. When we come to the injunction question, that is another thing. Now, the question is this—if I understood Mr. Spelling correctly yesterday, he said that if it was really property the power of the legislature to strip the proprietor of his protection would not exist. But we are now on the question that I am bringing to your attention. The supreme court of Pennsylvania in this case used this language:

The right of a workman to freely use his hands and to use them for just whom he pleases, upon just such terms as he pleases, is his property, and so in no less degree is a man's business in which he has invested his capital. The right of each—employer and employee—is an absolute one, inherent and indefeasible, of which neither can be deprived, not even by the legislature itself. The protection of it, though as old as the common law, has been reguaranteed in our bill of rights. "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation; and of pursuing their own happiness."

That is the language of the supreme court of Pennsylvania.

Now I quote from the decision of the highest court of the State of Vermont to show you that by the law of Vermont the principle is the same:

The principle upon which the cases, English and American, proceed is that every man has the right to employ his talents, industry, and capital as he pleases, free from the dictation of others, and if two or more persons combine to coerce his choice in this behalf it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all, in equal sense, property. (*State v. Stewart*, 59 Vt., 273.)

Now we will take one down in the State of New Jersey. This reads:

A person's business is property, entitled under the Constitution to protection from unlawful interference. Every person has a right, as between his fellow-citizens and himself, to carry on his business, within legal limits, according to his own discretion and choice, with any means which are safe and healthful, and to employ therein such persons as he may select. (*Barr v. Essex Trades Council*, 53 N. J. Equity, 101.)

The supreme court of Pennsylvania then proceeds:

With the absolute right of the appellees in their property, the appellants assumed to interfere, and would injure, if not destroy it, if their demands are not complied with. This no court will tolerate.

Now if you gentlemen will take the pains to examine the laws of every State in the Union as interpreted by the highest courts of those

States, you will see that that law is not peculiar to Pennsylvania, Vermont, or New Jersey, but it is true in every State in the Union.

The point that I make is, that being true, any attempt on the part of Congress to declare that which by the laws of the several States is property shall not be property, when it comes to the question of whether it shall be protected by the courts, would be an unconstitutional exercise of authority by Congress. It is as much beyond the power of Congress as it is for Congress to say that a horse shall be property and an ox shall not be property.

I have sufficiently indicated my points on those two special constitutional objections to this bill, drawn by Mr. Spelling and introduced by Mr. Pearre, by request, and sanctioned and supported and urged by the American Federation of Labor through their representatives here.

Now there are other most important constitutional questions involved in this matter which relate in one way and another to all these bills, but I wanted right here to call the attention of the committee to the effect of this law in destroying not only the bill introduced by Mr. Pearre through request, but that introduced by Mr. Little, which is the old anti-injunction law.

The principle that the very thing that is sanctioned here by these bills is contrary to the laws of the United States, and constitutes a most heinous criminal offense, was established by the Supreme Court by the action of Mr. Ralston himself in a case brought here in the District of Columbia for the labor unions, and if this bill becomes law it will completely reverse and repeal the law which he procured to be declared for their benefit by the Supreme Court of the United States.

I presume that the committee are sufficiently familiar with the terms of both these laws to recognize what it is aimed at. It seeks to make everything which one man alone can not do, and which can not be done by one man except with the concert of another, lawful. The first great boycott case that arose in the United States and came up for the action of the Supreme Court arose here in the District of Columbia, and let me, in order to direct the attention of the members of the committee to the precise point, refer to what the language of the information was. This is the case of Callan and Wilson, 127 U. S.:

The information showed that one Franz Krause, Louis Naecker, August Maeker, Charles Arndt, Louis Naecker, jr., Herman Feige, Gustav A. Bruder, Fritz Boetcher, Herman Arndt, Julius Schultz, Louis Brandt, Caspar Windus, Ernest Arndt, and Christian Feige were, during the months of July and August, 1887, residents of this District, each pursuing the calling of a musician;

That during those months there was in the District an association or organization of musicians by the name of "The Washington Musical Assembly, No. 4308, K. of L.," containing 150 members, and a branch of a larger association known as "The Knights of Labor of America," extending throughout the United States and having a membership of 500,000 persons, of which 10,000 were residents of this District;

That during the period named Edward C. Linden, Louis P. Wild, John N. Pistorio, James C. Callan (the appellant), Joseph B. Caldwell, George N. Sloan, John Fallon, Anton Fischer, and Frank Pistorio were members of the said local assembly, each pursuing the calling of a musician;

That on the 17th day of July, 1887, said local association imposed upon Franz Krause, one of its members, two fines, one of \$25 and the other of \$50, which he refused to pay upon the ground that they were illegal; and

That said Linden, Wild, Pistorio, Callan, Caldwell, Sloan, Fallon, Fischer, with sundry other persons, whose names were unknown, did, on the 7th day of August, 1887, unlawfully and maliciously combine, conspire, and confederate together to extort from Krause the sum of \$75 on account of said fines; to prevent the parties first above named—Krause, Naecker, and others and—each of them, from pursuing

their calling and trade anywhere in the United States; and to boycott, injure, molest, oppress, intimidate, and reduce to beggary and want, not only said persons, and each of them, but any person who should work with or for them, or should employ them or either of them.

The information charged that the manner in which the defendants so conspiring proposed to effect said result was to refuse to work as musicians, or in any other capacity, with or for the persons first above named, or with or for any person, firm, or corporation, working with or employing them; to request and procure all other members of said organizations and all other workmen and tradesmen, not to work as musicians, or in any capacity, with or for them or either of them, or for any person, firm, or corporation that employed or worked with them, or either of them, and to warn and threaten every person, firm, or corporation that employed or proposed to employ the said persons, or either of them, that if they did not forthwith cease to so employ them and refuse to employ them, and each of them, such person, firm, or corporation, so warned and threatened, would be deprived of any custom or patronage, as well from the persons so combining and conspiring as from all other members of said organization in and out of the District.

Then they proceed to say that they sent out one of these boycotting circulars. Mr. Callan was indicted or informed against in the police court of the District of Columbia. The court tried him without a jury and fined him, and upon his not paying the fine he was placed in the custody of the marshal, and thereupon he brought a writ of habeas corpus before the Supreme Court of the United States for his release upon the ground that the offense that was charged was not a matter of trifling moment, but that it was a heinous criminal offense under the law, for which he was entitled to a trial by jury. The Supreme Court in this case, having gone over the questions as to the peculiar powers of the local court here, came directly to the question, What kind of a thing was this? Was it a thing innocent by the common law? Was it something innocent by the laws of every civilized nation, until abandoned capitalists had gone to work and got statutes passed upon the subject? Not at all. The court says:

Without further reference to the authorities, and conceding that there is a class of petty or minor offenses not usually embraced in public criminal statutes, and not of the class or grade triable at common law by a jury, and which if committed in this District, may, under the authority of Congress, be tried by the court and without a jury, we are of opinion that the offense with which the appellant is charged does not belong to that class. A conspiracy such as is charged against him and his codefendants is by no means a petty or trivial offense. "The general rule of the common law," the supreme judicial court of Massachusetts said in *Commonwealth v. Hunt* (4 Met., 111, 121), "is that it is a criminal and indictable offense for two or more to confederate and combine together by concerted means to do that which is unlawful or criminal to the injury of the public, or portions or classes of the community, or even to the rights of an individual." In *State v. Burnham* (15 N. H., 396, 401), it was held that "combinations against law or against individuals are always dangerous to the public peace and to public security. To guard against the union of individuals to effect an unlawful design is not easy."

Now, the Little bill, so called, the old Grosvenor bill, the bill drawn by Mr. Ralston, was to take all such cases out of the condemnation of the criminal law. And be not deceived, gentlemen, if you pass a law of this kind you will tear up by the roots the whole law of conspiracy under the laws of the United States, as was so well pointed out here two years ago by Mr. Levy Mayer, of Chicago, when we had that hearing before you. Passing that point, I understood Mr. Pearre to say that he did not consider this bill made any such thing as that criminal, merely unlawful; but in section 2 the language is used, "shall constitute a conspiracy or criminal offense."

But I pass on now to the other matters which are very interesting at this time, and that is as to the power of Congress to restrict and

limit courts of equity, the Federal courts of equity, in the matter of issuing injunctions. The question you will observe here is presented in various phases. One class of bills are confined to the requiring of the giving of notice before any restraining order or preliminary injunction is issued—that of Mr. Henry, for instance. That applies to every case. It is not confined to labor cases. It is general in its terms.

Mr. PEARRE. That is a reiteration of the old law, is it not?

Mr. DAVENPORT. Not at all.

Mr. PEARRE. Not at all?

Mr. DAVENPORT. As I will direct your attention, as was talked about here by my friend the representative of the Brotherhood of Locomotive Engineers—

Mr. SPELLING. You mean Mr. Fuller, do you?

Mr. DAVENPORT. Yes, sir; he is my friend, and he is the representative of the Brotherhood of Locomotive Engineers.

Mr. SPELLING. The Brotherhood of Locomotive Engineers is not in this.

Mr. DAVENPORT. I have understood that he represented them. Do you not represent them?

Mr. FULLER. Yes, sir.

Mr. SPELLING. You have not stated whom you represent.

Mr. DAVENPORT. It is well known that I represent the American Anti-Boycott Association.

Mr. SPELLING. The Anti-Boycott Association?

Mr. DAVENPORT. Yes; pure and simple.

Now, gentlemen, it must occur at once to anyone that the bill supported here and urged by Mr. Fuller, the Gilbert bill, is confined to labor cases. And at once the question arises, Can you single out a class of cases like that from all other classes of cases? In other words, is that discrimination conformable to the injunction of the Constitution that no person shall be deprived of his property or liberty without due process of law? In another respect the Gilbert bill is also peculiar, for it provides that you must give notice and have a hearing, and that the notice be given to all the parties respondent, be they few or many. Mr. Henry's bill requires merely that notice shall be given—reasonable notice—before any restraining order or preliminary injunction is granted in any case whatever. At the same time he has also put in his bill that it does not authorize the issuance of an injunction in any case not now authorized by law. It is not entirely apparent why that was put in unless it be that Mr. Henry, or whoever drew the bill which he introduced, had in mind getting around this objection of so-called discriminatory or class legislation as contained in the other bills.

Another bill is introduced here, which, if I understand it, is supported also by Mr. Fuller (at any rate it was introduced by Mr. Henry), which gives the party who is brought up for any indirect contempt of court a right of trial by jury if he demands it, and puts all sorts of restrictions otherwise upon the matter of the power of the court over summary proceedings to punish a person who has violated its order. Now, it is also to be observed that both in the Little bill and in Mr. Spelling's bill there is a prohibition of the court's granting any permanent injunctions in those cases growing out of labor disputes, so that the matter invites a consideration of this deeply interesting

question as to the extent of authority of Congress over the circuit and other so-called inferior courts.

Mr. SPELLING. There is not anybody representing the Little bill here.

Mr. DAVENPORT. I understood that that was withdrawn; but at the same time Mr. Fuller has just informed the committee that it is substantially the same as yours.

Mr. SPELLING. No; I do not understand that. I do not represent it. It has nothing to do with this question.

Mr. DAVENPORT. But the vice that I am pointing out exists in Mr. Spelling's bill as well as in the Little bill. Now, the point in those bills is that Congress prohibits the equity courts of the United States "created," as it is called, or, as the Constitution says, "ordained and established" by Congress, and "constituted" by Congress, that Congress forbids their issuing any permanent injunction. There is another one, that provides that no temporary injunction shall be issued without a previous notice and hearing. There is still a third, which prohibits the issuing of a preliminary injunction or restraining order without giving a reasonable notice to the parties, in any case.

Mr. PEARRE. Is not that the usual practice of courts?

Mr. DAVENPORT. It is the law of the United States to-day, except for this, that it is in the discretion of the courts now to issue them without notice.

Mr. PEARRE. Yes.

Mr. DAVENPORT. Then there is the other provision that you can not punish a party for contempt unless you give him a jury trial if he wants it. All these provisions invite attention to the limits of the power of Congress over equity courts.

I have listened with a great deal of interest to the inquiries which were put to some of the gentlemen who preceded me upon that subject in regard to this one requiring jury trials in contempt cases. The question was asked whether there was any authority upon the subject. It so happens, gentlemen, that by the court of appeals of the State of Virginia this identical question has been elaborately considered and decided. I refer you to Carter's case, in 96th Virginia, beginning at page 791. It is too long to read, but it is a very interesting case. The court held that in the first place the power to punish for contempt was inherent in the court, and that the determination of the question of fact as to whether there had been a violation of that order was a power that existed in the court, which the legislature could not take away, and that the act which authorized the party to demand a jury trial, which the court in that case had disregarded, was unconstitutional, and the whole subject is there most elaborately considered.

There is another very interesting case in Arkansas, where the same principles are laid down. This is in 16th Arkansas, the case of the State *v.* Morrill, which commences on page 384. That presented this very interesting question. The legislature, having declared what acts should constitute contempts of court, then proceeded to say that no other acts should constitute contempt of court. A publication by a party disrespectful to the court was made, and the party was brought up before the court, and the question was raised and discussed and finally decided by the highest court in that State that where the legislature undertook to say what should constitute contempts of court it was only a graceful recognition on the part of the legislature of the

herent power of the courts to punish for such things. The courts did not get it from the legislature. The legislature recognized it. It was a thing gracefully done by the legislature; but so far as they undertook to prohibit other acts from being contempts of court, it was utterly null, because the power was inherent in the court, and the most that could be said of such a law was that it was a respectful suggestion by the legislature to the courts that if they could they should get along without proceedings for contempt for such acts.

Mr. PEARRE. As I understand, in all these contempt cases the contempt is based upon certain facts.

Mr. DAVENPORT. Yes, sir.

Mr. PEARRE. Now, do any of the courts hold—have you any decisions there which hold—that the legislature or Congress would not have the power to pass a law providing that the jury might pass upon the question as to whether those facts, those acts, were contempt?

Mr. DAVENPORT. That is the precise point.

Mr. PEARRE (continuing). Under an instruction of the court as to what should constitute a contempt?

Mr. DAVENPORT. That was the precise point in Carter's case, 96 Virginia. This identical question was raised under that Virginia statute and elaborately argued in behalf of the Commonwealth and by the attorney for the party who was adjudged guilty of contempt by the court itself without the intervention of a jury, and the very point which Judge De Armond so acutely asked questions upon and which Judge Pearre has raised here, as to whether or not the determination of the question of fact whether there had been a violation of the order was something so essential to the maintenance of the judicial power of the court that the legislature could not require the determination of the fact to be made by a jury, was considered by the court. It was held that the law was an unconstitutional invasion of that right, because, as they said, the legislature could no more depute it to the jury to find whether there had been a violation of the court's order than they could depute it to another court. And if the distinguished lawyers upon this committee are interested in following that down and running that down, it seems to me that the conclusions and reasoning of the court in that case will set at rest any doubt on the subject.

Mr. DE ARMOND. In what kind of a court did that originate in Arkansas; in the supreme court?

Mr. DAVENPORT. No, sir.

Mr. DE ARMOND. What was it; a district court or a circuit court?

Mr. DAVENPORT. A circuit court.

Mr. DE ARMOND. Is the circuit court a constitutional court there, or is it created by the legislature?

Mr. DAVENPORT. The constitution says there shall be a supreme court of appeals, a district court, and a circuit court.

Mr. DE ARMOND. That is what the constitution says?

Mr. DAVENPORT. Of that State?

Mr. DE ARMOND. Yes.

Mr. DAVENPORT. Now, the bearing of that question is fully discussed in this case. The case does not turn upon the question of whether or not they are named in the constitution, nor does it turn upon the peculiar language of the constitution, but upon the fact that they are courts created under the authority of the constitution and vested with the judicial power.

Mr. DE ARMOND. Do you know what the constitution says on that subject?

Mr. DAVENPORT. There is nothing peculiar in the language of the constitution. In Carter's case in 96th Virginia, page 806, it says:

The constitution of 1850, Article VI, section 1, with respect to the judiciary department, provides: "There shall be a supreme court of appeals, district courts, and circuit courts. The jurisdiction of these tribunals and of the judges thereof, except so far as the same is conferred by this constitution, shall be regulated by law."

Article VI, section 1, of the constitution now in force provides: "There shall be a supreme court of appeals, circuit courts, and county courts. The jurisdiction of these tribunals and of the judges thereof, except so far as the same is conferred by this constitution, shall be regulated by law."

Mr. DE ARMOND. Does not the constitution state there about conferring jurisdiction?

Mr. DAVENPORT. Yes, sir. Now, in the decisions of the Supreme Court of the United States in regard to the jurisdiction of district courts of the United States, it is said that a court which is constituted by Congress under the power vested in it by the Constitution—

Mr. DE ARMOND. Do you know what the Arkansas provision is? You quoted from the Virginia constitution, I believe.

Mr. DAVENPORT. I think that I can refer to it at once. No, I find that I do not have it here. But if there is any question that there is any different rule that applies between a court specifically named in the Constitution and one that the legislative branch is authorized to constitute and establish, in which by the terms of the Constitution the judicial power shall vest, an examination of the authorities will disclose that that is not the crucial matter, because this is the great case that reappears in them all—the case of *The United States v. Hudson*.

Mr. DE ARMOND. Has your attention been especially directed to this act of 1831?

Mr. DAVENPORT. Yes, sir. This is the case of *The United States v. Hudson* (7 Cranch, p. 32). It was there held as follows: The court was talking about the question as to whether the district courts of the United States had any common-law jurisdiction over crime. The editor of a newspaper up in my State, the *Hartford Courant*, had libeled the President and Congress by declaring that they had given Napoleon \$2,000,000 for the privilege of making a treaty with Spain, and in the United States district court he was indicted for what was a common-law offense, as it was claimed, and the Supreme Court of the United States said, when the case came up here, that the district court of the United States had no jurisdiction of such a matter because there was no such thing as a common-law crime against the United States, but still that there were certain implied powers which necessarily result to our courts of justice from their very nature. "But," it said, "jurisdiction of crimes against the State is not one of those powers. To fine for contempt, imprison for contumacy, enforce the observance of orders, etc., are powers which can not be dispensed with in a court, because they are necessary to the exercise of all others."

Mr. PEARRE. Then, under that, no appeal could be permitted from any action that the court took?

Mr. PALMER. There is an appeal in a contempt case.

Mr. DAVENPORT. This is the decision of the Supreme Court in the days of Marshall.

And so far our courts no doubt possess powers not immediately derived from statute.

Now, I had the pleasure of listening to that beautiful argument of Senator Bailey's the other day, and I was very much interested in his contention, as I had been previously in that of his colleague, Senator Culberson. Of course we are all aware that the eminent lawyers in the Senate, as well as elsewhere, disagree upon the subject as to whether or not there are certain inherent fundamental powers possessed by courts under the Constitution of the United States by virtue of their existence as courts.

Mr. DE ARMOND. Would it not be more accurate to say that they differ as to what those powers are than to say that they differ as to whether there are any?

Mr. DAVENPORT. Senator Bailey said, speaking about this subject of contempt, that the power to punish for contempt was not inherent in the court, and that it existed only because Congress had conferred the power upon the court.

Mr. SPELLING. I did not so understand him.

Mr. DAVENPORT. In order to make sure that I did understand him I went around this noon and read what he said.

This is the point. Those who contend that there are certain inherent powers in the court make a distinction between the judicial power and the jurisdiction of courts. Every lawyer knows that those words constantly are used in a double sense. Jurisdiction may apply to the class of cases over which the courts can exercise power, or it may relate to the judicial power which the court exercises in those cases. In the same way the words "judicial power" have two meanings, one synonymous with the jurisdiction over the class of cases and the other with the power that the court exercises upon those cases. Senator Knox and Senator Spooner, and, I think, Senator Culberson, expressed this distinction by the words "jurisdiction" and "judicial power;" but Senator Bailey said that that was a distinction without a difference; that the words "jurisdiction" and "judicial power" were used interchangeably and were synonymous, and in that way he contended that there was no essential difference between the two things; that the idea which is sought to be expressed by the word "jurisdiction" as describing the cognizance which courts can take of classes of cases and that sought to be expressed by the words judicial power are the same; that the meaning of the words jurisdiction and judicial power are the same; that cognizance of a class of cases can not be distinguished from the power of the courts to act upon and decide those cases; and he said that such a distinction did not exist in the writings of legal authors and decisions of the courts either in language or substance. He said that Senator Spooner and Senator Knox would be entitled to a patent for the discovery of the alleged distinction on account of its novelty, were it not for the fact that the invention was of no value.

Now, I do not know how thoroughly the Senator had time to investigate the matter, but an examination of the decisions and the textbooks and authorities on this subject discloses that not only is this language not an invention of either of those gentlemen or of Senator Culberson and the distinction not one that they have discovered, but it is a fundamental distinction in language and in things which has existed from the foundation of courts and recognized in all the decisions of our highest courts upon it; and if the question should be asked, Have you any authority to show that this thing is used in those two different senses, as meaning two different things? I will say that upon

examining the authorities I have found a multitude of them, and I want to call your attention to one particularly that arose in my own State, Connecticut, because I happen to be familiar with it. If you gentlemen happen to be familiar with the history of Connecticut, you will know that in 1639 we set up there in the woods, on the shores of the Connecticut River, a separate, independent government. The people got together and formed their own constitution without consulting the mother country; and later, when Charles the Second came to the throne in 1660, they got a charter from him, but they always considered that merely as an agreement on the part of the King not to interfere with their inherent rights.

Now, under that constitution all the powers of the State were vested in the legislature. The judicial power, the legislative power, and, practically speaking, the executive power were vested in the legislature; and we went through the Revolution under that charter and long after until we came to the year 1818, when, for famous historical reasons in our State, the people determined to separate the judicial, the legislative, and executive powers into three distinct departments of the government. To the language of our constitution I invite Judge De Armond's attention particularly, and that of all the other members of the committee. In our constitution it was as follows:

The judicial power of the State shall be vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly shall from time to time ordain and establish.

Now, the legislature of the State had created an inferior court, called the police court of the city of Hartford, and it became necessary for the supreme court of our State to determine whether the judicial power possessed by that inferior court was derived from the legislature of the State or whether when the court had been created or ordained and established by the legislature the judicial power of the State, as distinguished from its jurisdiction, vested in that court by operation of the constitution, just the same as if it had been mentioned by name in the constitution. In the case of *Brown v. O'Connell*, 36 Conn., 446-447, the court said:

Under the charter of Charles II both the legislative and the judicial power were vested in the general assembly. But it was one of the objects which the people had in view in framing and adopting the constitution to divest the general assembly of all judicial power. To that end Article II of the constitution provides "that the powers of government shall be divided into three distinct departments and each of them be confided to a separate magistracy, to wit, those which are legislative to one, those which are executive to another, and those which are judicial to another." For the same reason they use different language in different articles in conferring the powers. In Article III they say that the legislative power of the State shall be vested in a general assembly. In Article V they say, "The judicial power of the State shall be vested in a supreme court of errors, etc.," as hereinbefore cited. Thus, while the entire legislative power is vested in a general assembly, the judicial power is separated from it and vested in the courts "as a separate magistracy."

It is obvious from this view of these provisions that the general assembly have no power or authority to organize courts or appoint judges by virtue of the general legislative power conferred upon them, and that their authority to do either is special and derived from Article V of the constitution alone, and that the judicial power is not conferred by the general assembly, but vests by force of the constitution in the courts, when organized pursuant to the special provisions of that article.

It is conceded, as it well may be, that the legislature had the power to constitute this police court under the provisions of section 1 of the fifth article. There is nowhere in that instrument any limitation in respect to the number or character of the inferior courts which they may establish. It was therefore competent for them

to provide for the organization of the court in question and to define the jurisdiction it should possess, and when so constituted the judicial power of the State vested in it by force of the constitution to the extent of the jurisdiction so defined. (Brown v. O'Connell, 36 Conn., 446-447.)

There we have the supreme court of Connecticut using the same language, making the same distinction, and applying the same constitutional provisions as Senators Spooner and Knox and Culberson, because you will note, as Senator Bailey said in his argument, that there are two provisions of the Constitution of the United States, one which says that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish, and then, when they come to confer the legislative power, they say, "The legislative powers herein granted shall be vested in a Congress," and then they say among the other powers shall be one "to constitute tribunals inferior to the Supreme Court," and then they say Congress shall have power "to pass all laws which shall be necessary and proper to carry into effect the foregoing powers and all other powers vested in the Government or in any department or officer thereof."

Now, it so happens that not only did not Senators Spooner and Knox discover this distinction and first apply it, not only did they not first use that language in the way they did in that connection, but it is true also that the supreme court of Connecticut did not discover it, because there is a long series of decisions which recognize the distinction, which apply the distinction, and enforce it, and use those words to describe it, and which make the constitutionality of statutes and acts of the legislature depend upon that very distinction.

MR. DE ARMOND. Before you leave that, I would like to ask you something about the facts of that case.

MR. DAVENPORT. The Connecticut case?

MR. DE ARMOND. Yes. What particular question was there?

MR. DAVENPORT. The question arose as to whether or not the judge of that court was properly appointed and the question arose in that connection.

MR. DE ARMOND. Then it does not seem to be involved at all on that question.

MR. DAVENPORT. You mean that that is obiter dictum?

MR. DE ARMOND. On that proposition it does not seem to be in question as to the jurisdiction of the court and from what source it got that jurisdiction.

MR. DAVENPORT. It depended entirely on whether or not that court derived its judicial power from the constitution or from the legislature. That was the crucial thing in the case. If the committee would care to have it I would ask that the 36th Connecticut should be sent for.

MR. DE ARMOND. It does not seem to me at first blush that the question of whether or not that judge was properly appointed would necessarily involve what the power of the court would be nor whence the power was derived.

MR. DAVENPORT. If the committee has any doubt on the subject as to whether or not that was the very point of the decision, and whether or not it was so laid down and established (and at that time we had what we considered a very able court), I would like to show you the report itself. But as I was about to say, even the supreme court of

Connecticut did not discover that distinction. I would call your attention to the case of *Hale v. the State*. (55 Ohio St., p. 210.) This reads:

The power of commitment for contempt has long been considered as inhering in legislative bodies. It is not expressly granted. If it were not inherent it could not be created by the act of the legislature itself.

I suppose this is upon the principle that the stream may not rise higher than its source.

The existence of that power was recognized by this court in *ex parte Dalton*. The power we now assert is correlative of that which was there recognized. That it is not competent for the legislature to abridge the power of the courts to punish summarily such wrongful acts as obstruct the administration of justice is a necessary inference from the very numerous cases in which it has been held that the power inheres in courts independently of legislative authority. A power which the legislature does not give it can not take away. If power, distinguished from jurisdiction, exists independently of legislation it must continue to exist. From the numerous cases sustaining these views the following are selected because of their elaborate review of the authorities and vigorous statement of the principles involved, viz, *Hale v. State* (55 Ohio State, 210); *State v. Morrel* (16 Ark., 390); *U. S. v. Hudson* (7 Cranch, 32).

Mr. DE ARMOND. If I understood you right in the reading of the early part of that it said that the legislature could neither give nor take away this power to punish contempt.

Mr. DAVENPORT. Yes, sir; that is right.

Mr. DE ARMOND. If the power did not exist independently of the legislature the legislature could not give it; is that correct?

Mr. DAVENPORT. Yes. They were likening their own power to the inherent power of the legislative to punish for contempt. They said that the legislative body time out of mind has had it, and they said that if it did not have it the legislature could not by legislation confer it upon itself. But those who are curious in investigating these matters will find if they look it up that much as I regret to say it, for Mr. Bailey is of my own political faith, and I am an admirer of his, that he is wrong, and I must concur with the opinion of Senator Culbertson on that point.

Mr. DE ARMOND. Senator Bailey confined himself mainly, I think, to the decisions of the Supreme Court of the United States.

Mr. DAVENPORT. Yes, sir. Now, there is this interesting thing that must occur to everybody who undertakes to investigate this matter. In the early days of this country, you remember how the Constitution was adopted, and how the organization of the Government of the United States was accomplished, and when they had elected their President and members of Congress it became necessary for the Government of the United States to be organized and put in operation, and how they convened in New York, and there passed certain laws for the organization of the executive and judicial departments of the Government, and to provide for the collection of revenue, etc. Now, it so happens that the judiciary act of 1789 was drawn by Oliver Ellsworth, who had been a member of the convention from my State, and afterwards was Chief Justice of the United States. In the act of 1789, which was passed during that hurried session of that first summer—I think it was in September, 1789—having created these different courts according to the scheme that Ellsworth had outlined, Congress conferred upon the courts power to issue all writs—that is, they expressly passed a statute conferring upon the courts power to issue

all writs according to the usages and practice of law. In 1793, however, there was a revision of that statute in some respects, and among other things Congress conferred upon a judge, I think, the power to issue writs of ne exeat, but provided in it that the writ of ne exeat should not issue unless a bill in equity had been filed in the courts, and at the same time they conferred upon the judges, as well as upon the courts, a power to issue temporary injunctions. At the conclusion, however, of paragraph 5 of that act occurs this language:

No injunction shall be issued in any case without reasonable previous notice to the adverse party or his attorney.

If you will examine the history of that law you will find that that remained expressly upon the statute book away down to 1873, when the revision of 1874 took effect. During that long run of eighty years there was upon the statute books of this country the prohibition to the courts from issuing an injunction in any case without a previous notice to the party, and you will remember also that there was a prohibition there against enjoining proceedings in State courts and also one prohibiting—I do not know that it appeared that early, but it did later—against enjoining the collection of any tax; and one at once wonders how could the judicial affairs of a great country ever be conducted with such a prohibition as that upon the statute books. How could they keep house under it? What did the judges do when such cases came before them, as where a man is about to commit a fraud, and if you gave him notice of an application for an injunction he will at once commit the fraud. What did they do in cases of the negotiation of negotiable paper obtained by fraud, the pollution of a stream, or waste, or any of those things, where to give the man notice of an application for an injunction would at once lead to the doing of the act upon which the very jurisdiction of the court absolutely would depend?

During that long period of time they passed three bankruptcy acts, the first in 1800, which was repealed in two or three years, another in 1841 that was repealed in two or three years, and then in 1867 another. Everybody knows that the enactment of a bankruptcy law suspends the operation of every State insolvent law, and was it so that the restraining power of a court to prevent frauds could not be brought to bear without notice to rogues to stop the doing it because of that statute? You say, "Well, there must have been some special provision in those laws, or else the courts did not observe that law, or they did not consider it binding in all cases." There it was in so many terms upon the statute books. Now, people naturally wanting to follow the history of this thing will go back over the decisions and look into the action of the courts, and the very first thing you discover is that the courts had that very question presented to them, Was an injunction permissible in such cases without giving a previous notice to the other party, notwithstanding the language of that statute? Was an injunction issued without such notice void as beyond the jurisdiction of the court, or it was a mere rule of practice prescribed by the legislative body to the court which they were to treat as a rule of practice, which under the recognized principles of courts of equity they can mold and form and shape to suit themselves?

The matter came up in innumerable ways. It came up before Judge Story in 1845. It came upon before Judge Betts also, in New

York, in 1845. In some cases the courts got around it in this way: They said that it did not apply to such a kind of case, although its language was broad and sweeping and comprehensive, and plainly did cover it. They said that the legislature did not contemplate such a thing; and again it came up in a great many other ways.

The point that I am making is that, just as Mr. Spelling said here yesterday, a prohibition of that kind upon the statute books is merely providing a rule of practice for the courts. The court said in the famous case of *ex parte Poulteney* in 4th Peters, 472:

Every court of equity possesses the power to mold its rules in relation to the time of appearing and answering so as to prevent the rule from working injustice, and it is not only in the power of the court but it is its duty to exercise a sound discretion upon this subject.

That, you will remember, was a case where the rules of equity of the circuit courts of the United States as to parties appearing, which are made by the Supreme Court of the United States in pursuance of an act of Congress, were set aside by the court in that instance by reason of inability, by reason of the epidemic in New Orleans, to comply with it, and if anybody cares to see how the courts treated this matter of the prohibition they may examine the case of *Lawrence v. Bowman* in 1st McAlester.

Mr. PEARRE. As I understand, they disregarded it?

Mr. DAVENPORT. Yes, sir.

Mr. PEARRE. They got around it?

Mr. DAVENPORT. Yes, sir; as a natural result of attempting to have such a law.

Mr. BIRDSALL. Did the courts evade the law?

Mr. DAVENPORT. They did what they say here. I want to quote right in that connection what the supreme court of Indiana said. Did it ever occur to you, gentlemen, How does the Supreme Court of the United States or any other court obtain its power to declare a law of Congress unconstitutional? In the great case of *Marbury v. Madison*, where the Supreme Court first decided that an act of Congress was unconstitutional, where did they get the power? From a gift of the legislature? According to the doctrines that I have heard advocated since I came here to Washington the creator, the Congress, can clothe it with just as much or just as little of this judicial power as it chooses, and it can reach the point of saying, "You shall not declare our laws unconstitutional."

Now we all know that the judicial power of the court is to declare what the law is in controversies between individuals, to find the facts, and to render judgment thereon. It is not a mere advisory power, but they have a power to put the judicial stamp upon a thing and to make that thing of some value, and, as I have seen in a great number of cases, the supreme courts of the various States have said: "Suppose Congress repealed the law that authorizes us to issue attachments for contempt, would that take away from us the power to enforce obedience to our commands? To do so would be to destroy the judicial department." I want to read this:

That courts possess inherent powers not derived from any statute is undeniably true. Among these powers is the right to correct their records so as to make them speak the truth, to pass upon the constitutionality of statutes, to prevent the abuse of their authority or process, and to enforce obedience to their mandates. If it were granted that courts possess only such rights and powers as are conferred by statute

they would be mere creatures of the legislature and not independent departments of the Government. They are not mere creatures of the legislature, but are coordinate branches of the Government and in their sphere not subject to legislative control. (*Sanders v. The State*, 85 Indiana, 329.)

MR. DE ARMOND. I do not understand you to contend that Chief Justice Marshall in the case of *Marbury* set the Supreme Court of the United States or any other court of the United States above the Constitution of the United States?

MR. DAVENPORT. No, sir.

MR. DE ARMOND. He simply stated that they had the power within the Constitution of the United States?

MR. DAVENPORT. Yes. Being clothed with the judicial power every court has power to declare what the law is, and whether an act of Congress was a law or not depended upon the authority of Congress, and if the Constitution did not authorize that to be passed it was not a law.

MR. SPELLING. They said that it was not a law.

MR. DAVENPORT. Yes. But there is the power in the court to determine what is a law, and when they have determined that, they have the inherent power to find the facts in controversies between parties and to apply the law to those facts. Up to that time, as these gentlemen well said here yesterday or day before, everything is imperfect, inchoate, and there has still got to be a judgment of the court thereon. Then the judicial power of the people of the United States takes concrete form in that controversy, and then comes the question how is the court going to enforce that thing on which the Constitution says they have power?

MR. DE ARMOND. Under that law of 1793, the law which stayed on the statute books for eighty years?

MR. DAVENPORT. Yes.

MR. DE ARMOND. Do you find in the Supreme Court Reports any decision that that law was unconstitutional?

MR. DAVENPORT. No, sir; I do not find that. But I find decisions the principles of which applied to it would make it of this nature. As Mr. Spelling said yesterday, that law provided nothing more than a rule of practice for the court.

MR. DE ARMOND. Do you not think it is very remarkable that if it was unconstitutional the Supreme Court in eighty years of very careful consideration during a part of the time of the constitutional questions never got around to the point of saying so.

MR. DAVENPORT. The matter was never brought before them squarely except in 1799 in *New York v. Conn*, 4 Dallas. But let me say there are other statutory prohibitions of the issuance of injunctions on which a word might be said. You know there is a prohibition against enjoining proceedings in a State court. That was before the Supreme Court in the case of *Day v. Wolcott*. I think it came up from my State. Two citizens of another State sued Alexander Wolcott, a famous citizen of Connecticut, on two notes. He then went into our State court and applied for an injunction, or brought a bill in equity as we did before we reformed our judicial procedure there, and thereupon they removed the latter case into the Federal court; but the United States Supreme Court said that the court had no jurisdiction of that case, because the relief that could be granted in it was only for an injunction upon a proceeding in a State court.

Now, what is the basis of that? Does that law depend on anything peculiar to itself? As was suggested the other day by Senator Morgan, of Alabama, the courts of a State are the courts of another sovereignty than the United States, and whether the courts of the United States shall enjoin proceedings in the courts of another sovereignty is a matter for consideration from a political standpoint. That matter stands on another basis entirely. And so, as to enjoining the collection of a tax, the Government can refuse to permit itself to be sued. And besides that, there are peculiar reasons of urgency which make that a law by itself. But we are coming down now to what became of this law of 1793. Here were the courts issuing injunctions in patent and copyright cases and bankruptcy cases, right and left. The matter had come up before Judge Deady in 1868, and he said, "You do not have to give notice." "Of course, if you did, that would be notice to the party to leave the country with the assets, and to require a notice is absurd." Then we come down to 1872, when Senator Mat Carpenter prepared a famous statute, and the history of that statute is very interesting.

It was introduced in Congress and sent to the Committee on Judiciary of the Senate. In order to put the matter beyond all question, to make the actual condition of the law conform to the action of the courts in so many instances, or else to make the power of the court adequate to deal with the necessities of the situation, among other provisions of the statute he provided that where a motion for an injunction was filed in court, if there was danger of immediate and irreparable injury, a temporary restraining order might be issued. In other words, it brought the express language of the statute into conformity with what had been in a great many instances the precedents of the courts from necessity.

Mr. PEARRE. Was that done by a separate act of Congress, or was it only a revision of the laws?

Mr. DAVENPORT. No, sir; it stood this way. I refer to volume 17, United States Statutes at Large, chapter 255, acts of the Forty-second Congress, second session, pages 196 and 197. That was a very famous statute, entitled "An act for the furtherance of justice," and it covered a multitude of subjects, and one of the singular things about the statute was that it had in it when introduced a provision changing the mode of pleading in equity cases to a simple statement of the facts which the party was to answer.

Mr. PEARRE. It was a sort of a codification, was it not?

Mr. DAVENPORT. They struck that out. And the question here arises, Did they not have in mind, when they struck that section out, the fact that the courts of the United States had held that the equity jurisdiction of the Federal courts is far beyond the reach of Congress in many respects?

You could not pass a law that would require a court of equity to have a jury and find the facts by a jury. Of course you could pass a law that would authorize them to do it if they saw fit, but it has been repeatedly decided that there is that inherent distinction between courts of law and courts of equity which gives a person, under the Constitution, certain peculiar remedies which are essential to the preservation of his rights, and for the court itself to pass upon the facts is one of those essential things of which to deprive him of is to deprive him of due process of law.

Mr. BIRDSALL. There are one or two inquiries that I would like to make before we leave this subject. On this proposition of Congress having power to ordain and establish inferior tribunals, what do you say as to the power to destroy them altogether?

Mr. DAVENPORT. Well, if the Congress of the United States repealed every law that provided for the existence of the organization of the Supreme Court and inferior courts alike, I am inclined to think that it would be a valid law, notwithstanding what Senator Spooner thinks. I think they can do it, just as they can repeal every law providing for crimes. It is not to be believed that they would do it, and it is an academic question, of course, but it seems to me that the power of Congress to annihilate the courts is an actual power.

Mr. BIRDSALL. Then, coming to the exercise of a less degree of power than that, if I get your position correctly it is as to all matters that are inherent in the courts, which you define as judicial powers, that they are beyond the jurisdiction of Congress to interfere with at all; but as to matters which go to the jurisdiction of the courts, that the jurisdiction may be defined, and as well regulated, by Congress by legislation?

Mr. DAVENPORT. Of course, Judge, all these things are to be considered within reasonable limitations.

Mr. BIRDSALL. That, I take it, is the logic of your argument.

Mr. DAVENPORT. Within reasonable limits.

Mr. BIRDSALL. Of course, within reasonable limitations.

Mr. DAVENPORT. Of course a court could not say, "Here, he has committed a contempt. Take the man out and hang him." Of course the Supreme Court of the United States has sustained the power of Congress to limit the power of the courts to punish for contempt, confining it to those powers which are in the act of 1831, which Judge De Armond calls attention to. But anything that essentially impairs and destroys the necessary powers of the court can not be done.

You will remember what Chief Justice Marshall said in reference to that clause of the Constitution which says that Congress shall have power to pass all other laws necessary and proper to carry into effect the foregoing powers. He says: "Let the end be legitimate, let the means be appropriate, the selection of those means is absolutely in Congress." But the end has got to be legitimate. Now, it is a legitimate exercise of the powers of Congress to parcel out, of course, the classes of cases, to limit the amounts involved in cases for the jurisdiction of the court. But it is not a legitimate end to impair the necessary powers of the courts when established and given cognizance of cases.

(At this point, at 5.15 o'clock p. m., the committee adjourned.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
April 23, 1906.

The committee met at 11.30 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. Will it be agreeable for you gentlemen to go on with the number of members of the committee now present?

Mr. DAVENPORT. I would like as full a committee as I could have; but I will do just as the committee says. It will be just as convenient for me to go on any other day.

The CHAIRMAN. The committee wants to be in the House this morning when the House opens.

Mr. DAVENPORT. Will you have to adjourn at 12 o'clock?

The CHAIRMAN. We want to be on the floor when the House convenes.

Mr. DAVENPORT. Then I think I should prefer to go on at some other time.

Mr. FULLER. I will say for the benefit of the committee that while it is proper for us to close this debate, I see there is an effort on the part of the opposition to delay these hearings for a purpose; and I say that with due respect to them. In order that this matter may be facilitated I will agree at this time—I do not care if there are not over two members of the committee present—to proceed and answer some of the statements that have been made by the opposition. If the other side do not want to go ahead in order, I would gladly yield that much for the purpose of trying to get this thing off our hands.

The CHAIRMAN. The committee will come to order, and if anybody present desires to be heard we will hear him. It seems to be the desire of the members of the committee present to proceed with the hearing.

STATEMENT OF MR. DANIEL DAVENPORT.

Mr. DAVENPORT. Mr. Chairman and gentlemen of the committee, when I was before you last Thursday discussing some of the features of this measure, or these measures, I directed the attention of the committee to what seemed to me to be two specially vital objections to the measure proposed by Mr. Spelling and advocated by him as representing the American Federation of Labor.

One was that the bill related to all sorts of agreements and acts affecting the rights of persons and their property interests, irrespective of whether or not they arose in what might be called interstate commerce, and that by reason of their generality, under the well-established principles as laid down by the Supreme Court of the United States, the bill would be unconstitutional on that account. And I cited as applicable to that matter the trade-mark cases to be found in 100 United States, where, as the committee will remember, Congress had passed an act providing for the registration of trade-marks, and did not attempt to confine it to their use in interstate commerce, and an act was passed making it a crime to counterfeit any such trade-mark. The act was held unconstitutional because it was broad enough to cover commerce within the States as well as commerce between States and with foreign countries, and the courts would not and could not, by construction, confine its operation to those matters that were matters of interstate commerce.

That was one special ground that I pointed out for the unconstitutionality of the act. Another was that Mr. Spelling in his bill attempts to define what shall constitute property, and that the very things which he says shall not be considered property are by the laws of all the States regarded as property, and that it is not within the power of Congress to declare to the judiciary of the United States that a thing shall not be property which is considered, treated, and held by the courts and under the laws of the States as property.

I also directed the attention of the committee to certain other features of these bills which seem to be obnoxious to the claim that they are unconstitutional. One was that in effect it was to deprive the parties of the benefits of the fifth amendment to the Constitution, which guarantees to everybody that their liberty and property shall not be taken from them without due process of law; and also that every one of the bills was obnoxious to the objection that it attempted to limit, restrain, and control the courts in the exercise of judicial power beyond the reach of the authority of Congress.

In the course of that statement I called the attention of the committee to several cases. One of them was the case in 36th Connecticut, which I did not have at hand then, and which I brought up here Friday, but which I can not now get. In answer to the inquiry of Judge De Armond as to precisely how that question arose, I am now able to state just the way the question arose. I wish I had the book here—

Mr. SPELLING. It is in the library. I saw it this morning, and I saw it Saturday.

Mr. DAVENPORT. I could not find it this morning.

Mr. SPELLING. I will get it for you.

Mr. DAVENPORT. Will you?

Mr. SPELLING. Yes; so that you will have the book.

Mr. DAVENPORT. I also called the attention of the committee to the Carter case, in 96th Virginia.

Before I proceed to take up those subjects again, I want to call the attention of the committee to a point that was suggested by Mr. Gompers. Mr. Gompers, in his statement, made it a matter of complaint that the Judiciary Committee, as well as other committees in this Congress and in former Congresses, had not complied with their wishes; that they had been here in the attitude of petitioners long enough, and that they felt they were entitled to have the matter disposed of favorably as soon as possible.

Well, now, it is true, gentlemen, that the American Federation of Labor, as well as the organization represented by Mr. Fuller, have been here repeatedly asking for and insisting upon this legislation; but they omit to state that this very question has been submitted to the verdict of the American people. For nearly ten years now it has been discussed on a thousand stumps, in a great many campaigns, and the issue has been pretty squarely presented to the American people. The successful party has repeatedly declared its position in regard to it, and whenever they have brought it up and presented it squarely the verdict of the American people has been decisively given on that question.

In that connection I want to read from a speech delivered by Senator Foraker at Chillicothe, Ohio, on the 19th of September, 1903, when this matter was before the people, when the position of the party that he represented was defined, and when he discussed this particular subject that had been bandied about as "government by injunction."

He spoke as follows on the subject of "government by injunction:"

This phrase expresses a very dangerous thought.

All the judicial power of our Government is vested by the Constitution in one Supreme Court and such inferior courts as Congress shall from time to time ordain and establish. The Constitution thus imposes upon Congress the duty of providing for the exercise by suitable tribunals of all the judicial power that belongs to the Government. For Congress, in the distribution of judicial power, to fail or refuse to invest some court, somewhere, with the equitable power of injunction would be to

violate the Constitution and commit an act of revolution. For Congress to invest certain courts with that power, as has been done, and then divest them of it in whole or in part, as now proposed, without at the same time investing some other court with such power, would be equally a violation of the Constitution and an act of revolution.

But, aside from all this, as a mere matter of policy, the proposition is the very essence of un wisdom.

The courts of our country have ever been the conservative and preservative force in our Government. They are the one department unmoved by the excitements and prejudices of the passing hour. No man is so humble but that if he imagines himself aggrieved, no matter by whom, he does not know that in and through the courts his wrongs may be redressed, and who does not have in that fact an ever present assurance of the protection of Government for his life, liberty, and property. There have no doubt been miscarriages of justice in the past, and there no doubt will be miscarriages of justice in the future, for nothing that is dependent upon human agency can be at all times perfect in its operation. But, taken as a whole, our judges have always met the just expectations of our people, and in their independence, their honor, and their fearlessness in the discharge of their duties, we have ever found a comforting guarantee of the permanency of our institutions. No greater calamity could befall us than the serious impairment of the usefulness of this department of our Government. To deprive our courts of any part of their rightful jurisdiction would be at least a step in that direction. Only baneful results could follow. It might be even the beginning of the end of the Republic, for men will not long maintain a government that does not sustain a free and untrammelled judiciary. All such propositions are not only revolutionary, but they are also anarchistic and must be dealt with accordingly.

There is another feature of this proposition that makes it still more reprehensible, and that is the demagoguery of which it is formed. It is intended to capture the vote of the labor union. On that account it is anything but a compliment to the intelligence and patriotism of laboring men. The true friend of labor unions is the man who will tell them the truth, and not the demagogue who, prating of friendship, holds out false promises and elusive hopes of something that is unattainable. Every laboring man should know that naturally all men are his friends. In some form or other all must labor in this world, and humanity sympathizes with humanity the world over; but there are certain limitations in all human affairs, fixed in the very nature of things, beyond which sympathy will not go, no matter in whose behalf they may be invoked. This is especially true as to all governmental affairs, and accordingly we find in the nature of our institutions natural limitations upon legislative remedies.

Doubtless there have been instances of an erroneous use, or even an abuse, of the writ of injunction, but the American people will not strip their courts of their wholesome and beneficent power to restrain threatened violations of personal and property rights to prevent the recurrence of such occasional wrong. To do so would be a blow at vital principles. It is far better to leave the parties affected by erroneous judgments which may be given to find their relief in the higher courts to which they may appeal, requiring us all alike to loyally abide whatever final judgment may be ultimately rendered; for no matter what may be said to the contrary we all know that our courts honestly strive to administer equal and exact justice, and all should know that they who would strip them of their legitimate power place themselves in a bad light before the American people. When men find that they have purposes which are in conflict with the law as administered by our courts of equity the best thing they can do is to abandon them, for it may be safely assumed that what an American court of equity will not allow should not be done.

Mr. SPELLING. Will you give me that authority? I was out when you commenced reading.

Mr DAVENPORT. Senator J. B. Foraker. That speech was delivered by Senator Foraker in opening the campaign in the great State of Ohio on the 19th of September, 1903. It was one of the subjects that was discussed in that campaign, and we all know the result. I merely cite it as a definition by a great man—and I consider him a truly great man—upon this subject, defining the position of a great party when appealing to the suffrages of the American people for their favor; and there is no use disguising the fact that the support of this country was given to that party largely because of their attitude on that and similar questions; and to my mind it is a question

really whether or not those who have been intrusted with the powers of this Government for the welfare of the whole people will be true to the position and the declarations, and, indeed, the promises which they then made.

Now, I say that much, gentlemen, drawn out by the statements made by Mr. Gompers and others, reiterated here day after day, when for one reason or another people here are not in a position where they can at once present their views as an answer to the contention that the full opportunity on the part of the people to express their views upon these matters has not been afforded.

Now, returning to the case in 36th Connecticut, the case of *Brown v. O'Connell*, which I cited. The case arose in this way: A recognizance was entered into by the defendant before the police court of the city of Hartford, and an action of debt was brought on this recognizance.

The declaration alleged the establishment of the police court of the city of Hartford and its criminal jurisdiction and that an arrest was made and bond given, and so forth.

The defendant filed the following plea:

The defendant in court defends, pleads, and says that the plaintiff ought not to have or maintain his said action, because he says that the said charter of the city of Hartford, by the provisions of which the said city police court is established, as in said declaration is set forth, provides that the judge of said city police court shall be appointed by a major vote of the entire court of common council of said city, and that so and not otherwise was in fact appointed the pretended judge of said court, who appointed the said Frederick Eberle the pretended clerk of said court, and by whose direction the said supposed bench warrant was issued and before whom the said supposed bond of recognizance was taken and the other proceedings had, mentioned in said declaration.

That the said police court is an inferior court within the true meaning and intent of the constitution of this State, and the judge thereof should have been appointed by the general assembly of this State, as required by the provisions of said constitution and said charter, in so far as it authorized the appointment as aforesaid of the judge of said police court and gave such judge so appointed as aforesaid judicial power and authority, was and is unconstitutional and void. And the pretended judge of said court so appointed as aforesaid had no constitutional power or authority to hold said court or exercise any judicial power or authority in the premises, and the issuing of said bench warrant and the taking of said bond of recognizance and all the other proceedings had in the premises mentioned in said declaration were unauthorized, unconstitutional, and void.

Issue was voiced to the court upon this plea and the following facts were found by the court—

In substance, that the judge was appointed by the common council, and was holding the court.

Now, the question was, whether or not that court was a legislative court, which could be created by the legislature, and one that it could authorize the common council to appoint a judge of, or whether it was an inferior court which, under the constitution, the legislature could ordain and establish, and whether, when it was so ordained and established, the judicial power of the State vested in that court *proprio vigore*, or whether or not it got its judicial power from the legislature. The other question was, if it was a court of the latter character, could the legislature, which was authorized by the constitution to appoint the judges, delegate the power to the common council of the city of Hartford to make the appointment?

The court held, in the first place, that the court was one of the inferior courts provided for; second, that the legislature as well as the Congress of the United States, has no judicial power; that by virtue

of the constitution the judicial power of the State vests in the court when it is ordained and established, not by virtue of any act of the legislature, but by virtue of the constitution itself; third, they held that the constitution required that the judges of such court should be appointed by the general assembly, and that they could not delegate that power to the common council; and fourth, they held that the person being in office, assuming to exercise all the powers and duties of the office, was a judge de facto, and that the party who gave a recognizance could not question the fact. Now then—

Mr. DE ARMOND. That was really all the point in that case?

Mr. DAVENPORT. That was the way the question arose.

Mr. DE ARMOND. I say, that was really all the point that was in it—the last one?

Mr. DAVENPORT. Oh, no. In the first place they had to decide whether or not this was a constitutional court or a legislative court.

Mr. DE ARMOND. It did not make any difference about that at all. When they decided that it was a de facto court, and that the judge was exercising the functions of it, the man giving the recognizance had to respond.

Mr. DAVENPORT. Provided they determined it was a constitutional court and that he was a de facto judge of that court.

The court says, on page 446:

It should be borne in mind that no judicial power is vested by the constitution in the general assembly, either directly or as an incident of the legislative power, and the general assembly can not confer it.

Then follows what I read the other day:

Under the charter of Charles II both the legislative and the judicial power were vested in the general assembly; but it was one of the objects which the people had in view in framing and adopting the constitution to divest the general assembly of all judicial power. To that end article 2 of the constitution provides that "the powers of government shall be divided into three distinct departments and each of them be confided to a separate magistracy, to wit, those which are legislative to one, those which are executive to another, and those which are judicial to another." For the same reason they used different language in different articles in conferring the powers. In article 3 they say that the legislative power of the State shall be vested in the general assembly. In article 5 they say the judicial power of the State shall be vested in the supreme court of errors, etc., as hereinbefore cited. Thus, while the entire legislative power is vested in the general assembly, the judicial power is separated from it and vested in the courts "as a separate magistracy."

It is obvious from this view of these provisions that the general assembly have no power or authority to organize courts or appoint judges by virtue of the general legislative power conferred upon them, and that their authority to do either is special, and derived from article 5 of the constitution alone; and that the judicial power is not conferred by the general assembly, but vests, by force of the constitution, in the courts, when organized pursuant to the special provisions of that article.

It is conceded, as it well may be, that the legislature had the power to constitute this police court, under the provisions of section 1 of the fifth article. There is nowhere in that instrument any limitation in respect to the number or character of the inferior courts which they may establish. It was therefore competent for them to provide for the organization of the court in question and to define the jurisdiction it should possess; and when so constituted, the judicial power of the State vested in it, by force of the constitution, to the extent of the jurisdiction so defined.

During my statement, also, the question arose as to the precise point upon which the case in *Carter v. The Commonwealth*, in 96 Virginia, turned. That was the case where the supreme court of appeals of Virginia held that an act that provided for a trial by jury in cases of such contempts was unconstitutional; that the power to punish for contempt was inherent in such courts, and that the act of the legislature

in taking from the court itself the power to determine whether or not a party had in fact violated the order of the court and giving it to a jury was a direct invasion of the inherent power of the court; that it necessarily impaired a necessary power in the court to protect itself, and it was therefore void. The question was asked me, I think by some member of the committee, if that was the point upon which the case turned, and it was the point. It was not made to depend upon the question whether or not this court was specifically named in the constitution. It was upon the nature of the courts when established. The court says:

What was the nature and character of the tribunals thus instituted? Our conception of courts, and of their powers and functions, comes to us through that great system of English jurisprudence known as the common law, which we have adopted and incorporated into the body of our laws.

That the English courts have exercised the power in question from the remotest period does not admit of doubt. Said Chief Justice Wilmut: "The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt acted in the face of the court; and the issuing of attachments by the supreme court of justice in Westminster Hall for contempts out of court stands on the same immemorial usage which supports the whole fabric of the common law; it is as much the *lex terrae*, and within the exception of *Magna Charta*, as the issuing of any other legal process whatsoever.

"I have examined very carefully to see if I could find out any vestiges of its introduction, but can find none. It is as ancient as any other part of the common law; there is no priority or posteriority to be found about it; it can not, therefore, be said to invade the common law; it acts in alliance and friendly conjunction with every other provision which the wisdom of our ancestors has established for the general good of society. Truth compels me to say that the mode of proceeding by attachment stands upon the very same foundation as trial by jury; it is a constitutional remedy in particular cases, and the judges in those cases are as much bound to give an activity to this part of the law as to any other." (3 Campbell's Lives of Chief Justices, 153.)

In *United States v. Hudson et als.*, 7 Cranch, 32, it was held that "certain implied powers must necessarily result to our courts of justice from the nature of their institution. But jurisdiction of crimes against the State is not among those powers. To fine for contempt, imprison for contumacy, enforce the observance of order, etc., are powers which can not be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts, no doubt, possess powers not immediately derived from statute.

Now, then, the great question in the case was whether or not the act of the legislature in imposing upon the jury the determination of the fact of the violation of the order was such an infringement upon the power of the court as to make it invalid, and the court very clearly decided that it was. Otherwise the court, as I say, would be absolutely helpless.

Mr. DE ARMOND. When was that decision rendered?

Mr. DAVENPORT. That was rendered in 1899—March 16, 1899.

Now, while we are discussing this subject generally, I want to direct the attention of the committee to another case that I have not seen referred to much on this subject, the case of *Brown v. Kalamazoo Circuit Judge*, to be found in 75 Michigan, page 274, because this goes to the general subject we are considering.

Mr. BIRDSALL. Do you regard the Michigan courts as very good authority?

Mr. DAVENPORT. They used to be so considered—Judge Cooley, you know. When I was studying law we used to cite them.

In that State they passed a law which required questions of fact to be found by a jury in equity cases, and the proposition came up to

the supreme court of that State as to whether such a thing as that was constitutional or not.

This, mind you, was not a question of contempt. It makes no difference whether it be a court of law or a court of equity, as a lawyer I most respectfully submit to the lawyers of this committee the fact that this proposed bill of Mr. Henry empowers a party to insist upon a jury in contempt cases for disobedience of an order of court renders it unconstitutional.

But we are coming a little further now as to this question of the inherent powers of a court of equity. As I understand the contention of those who claim that our courts of equity have no other powers than those that Congress may see fit to give them, it is that, while they concede the constitutional duty of the legislature to establish a judicial system and to give it its proper and necessary attributes, and all that, they say that, after all, the source of that power is the legislature; that the judicial power resides in the legislature until such time as they parcel out a little of it here and a little of it there, and then it is because of the legislative will that the judicial power residing in them passes from them over into the court, and that, as the argument is that the greater, of course, contains the less, if Congress can create a court, as it is called—if it can impart all the powers that it possesses to it—it may grant it all or withhold some, and that the question as to whether or not the court shall possess any power, or how much power, depends upon the wise discretion of the legislative body. I understand that is the contention made by those who believe that position to be sound.

In the discussions here the other day a question arose on this very subject among the members of the committee, and Mr. Littlefield pointed out that there was one restriction upon the power of the legislature anyway, and that was in regard to the right of trial by jury and that machinery in a court. The fact is, gentlemen, there is not any proposition better established in the jurisprudence of the United States than this, that the distinction between courts of law and courts of equity under the Constitution of the United States is fundamental. Congress can not destroy that distinction, nor can it essentially destroy whatever pertains to that equity jurisdiction.

While it is true that the legislature, the Congress, can say over what classes of cases, within certain limits, the courts shall exercise jurisdiction, they can not destroy that fundamental distinction between courts of law and courts of equity, and they can not essentially impair the vital distinction between those two.

I suppose we have all read with interest Senator Spooner's speech, where he said that he did not see, at that time, that there was any vital distinction between courts of law and courts of equity; and thereupon his antagonist said:

Why, that being granted, then it follows that what the court of law can not do a court of equity can not do. If courts of law can not issue writs of mandamus, which to a court of law is the same arm that the injunction is to a court of equity, if they can not issue an execution without express authority from the legislature, neither can a court of equity issue its process or enforce obedience to its orders without authority from the legislature, either express or implied.

Well, I think, upon reflection, Senator Spooner would be of the opinion, upon looking over all the authorities, that he conceded too much when he made that admission, because the fact is quite otherwise.

I want to read a little from this case of *Brown v. Kalamazoo Circuit Judge*, in 75 Michigan, page 277:

As Michigan had a long Territorial experience, its judicial system naturally became fashioned in close analogy to that of the United States and so recognized and perpetuated in their essentials the classification of legal and equitable rights as involving the necessity of separate administration in important particulars. The Constitution of the United States recognizes the division of ordinary civil jurisprudence into cases at law and cases in equity, and it has been held by the Supreme Court of the United States that this recognition puts it beyond the power of Congress to make any serious change in that classification. In *Carpentier v. Montgomery* (13 Wall., 480) the importance of the distinction and the impracticability of disregarding it was somewhat explained in such a case as is now under consideration, as in several previous cases it had been held that the policy enjoined by Congress, of securing as far as possible uniformity of practice between the State and the United States courts, could not be carried so far as to confound the legal and equitable jurisdictions.

Then follows a long list of citations. I skip now to page 283:

This leads to the inquiry whether it is competent for legislation to bring about any such radical change as is here attempted.

That is, the trials of questions of fact in equity cases by jury—

We think it is not. The decisions of the United States Supreme Court before referred to do not bind State practice, but they nevertheless to some extent indicate the real difficulty. That tribunal did not decide that under the United States Constitution there would be no change in equitable procedure, because the whole body of chancery practice has been repeatedly amended and simplified by that court. Their rulings mean neither more nor less than that there are various kinds of interests and controversies which can not be left without equitable disposal without either destroying them or impairing their values.

It is within the power of a legislature to change the formalities of legal procedure, but it is not competent to make such changes as to impair the enforcement of rights. In rude times, when there is no business, and no variety of property rights, very simple remedies are sufficient. But where the ordinary remedies have become inadequate to deal with more extended or peculiar interests, such as multiply in all civilized countries, different methods and different tribunals become necessary. The universally recognized basis of equitable jurisprudence, found in statutes and constitutions, as well as in the reports and text writers, is the inadequacy of the common law to deal with these subjects. A principal basis of that inadequacy was the nature of the tribunal passing on the facts. In common law issues of fact and law can be readily separated; but in the great majority of equity proceedings it is impossible to make any such separation.

The functions of judges in equity cases in dealing with them is as well settled a part of the judicial power and as necessary to its administration as the functions of juries in common-law cases. Our institutions are framed to protect all rights. When they vest judicial power, they do so in accordance with all of its essentials, and when they vest it in any court, they vest it as efficient for the protection of rights and not subject to be distorted or made inadequate. The right to have equity controversies dealt with by equitable methods is as sacred as the right of trial by jury. Whatever may be the machinery for gathering testimony or enforcing decrees, the facts and the law must be decided together; and when a chancellor desires to have the aid of a jury to find out how facts appear to such unprofessional men, it can only be done by submitting single issues of pure fact, and they can not foreclose him in his conclusion unless they convince his judgment.

Theory amounts to nothing in the history of jurisprudence. The system of chancery jurisprudence has been developed as carefully and as judiciously as any part of the legal system, and the judicial power includes it, and always must include it. Any change which transfers the power that belongs to a judge to a jury, or to any other person or body, is as plain a violation of the Constitution as one which should give the courts executive or legislative power vested elsewhere. The cognizance of equitable questions belongs to the judiciary as a part of the judicial power, and under our Constitution must remain vested where it always has been vested heretofore.

Mr. SPELLING. May I ask you if that case cites the constitution of Michigan?

Mr. DAVENPORT. I do not know. There is nothing peculiar about

the constitution of Michigan in this respect. I guess they have a pretty good constitution there.

Mr. BIRDSALL. Who is that opinion by—Judge Cooley?

Mr. DAVENPORT. That was written in 1889, by Judge Campbell.

I also called the attention of the committee to the great difficulty we had in this country in trying to keep house under the prohibition contained in the act of 1793, so often referred to, which said that no injunction should be issued in any case without a reasonable notice to the adverse party or his attorney, and I called attention to the fact of how frequently apparently it was disregarded; that the enactment of these various bankruptcy laws in 1800, 1845, and again in 1867, which contained no provision which was inconsistent with that provision, of course suspended all the State insolvent laws, and that if that prohibition of the statute was respected by the courts it meant to give every roguish merchant in the country a free hand, and how the courts decided that notwithstanding that provision they would not observe it.

Mr. DE ARMOND. Have you any case in which they really decided they would not observe it?

Mr. DAVENPORT. Yes, in this way: Of course we all know that in the year 1799, when Oliver Ellsworth was still Chief Justice, there came up the great case of *State of New York and Connecticut* to the Supreme Court. It was brought in that court, and that court had issued an injunction. In argument before the court they held, contrary to the contention of the lawyers on the other side, that that prohibition extended to the court as well as the judge. The way it came into the statute was in connection with a provision giving power to a judge, as well as the court, to issue injunctions, and at the close of the paragraph they stated: "And no injunction in any case shall be issued without previous notice to the party." Chief Justice Ellsworth held in that case, as Mr. Bailey says, and as we all know, that that prohibition extended to the court and that the injunction was void. There you have, in the year 1799, that decision. This case was followed by the circuit court for the district of Indiana in 1866 in *Mowrey v. R. R.* (4 Biss., 80). Now, what did the courts do later?

Mr. BIRDSALL. This thought has occurred to me in connection with that line of argument, Mr. Davenport, as to whether this attempt to exercise the power of injunction does not go to the jurisdiction of the court. That is to say, we do not deprive the court of the power to issue the writ, nor do we attempt to deprive the court, in the exercise of the writ, of any of the powers that go with it. We simply say in effect that you having jurisdiction to issue this writ without notice, as a requisite of that power—the exercise of the power—we shall require that the party shall be given notice in order that you may have jurisdiction of it.

Mr. DAVENPORT. I understand.

Mr. BIRDSALL. As I have followed your line of argument, it is proceeding upon the theory that Congress may have power to regulate jurisdictional affairs, but it has no power to regulate what falls strictly within the judicial power.

Mr. DAVENPORT. Abundance of authority can be found to the effect that where the prohibition of the legislature to the court extends to practically depriving the court of judicial power over the matter, that prohibition is a nullity. For instance, suppose a man is about to pollute a stream that supplies the waterworks of some town, and is going

to do it at once. The party applies to the court for an injunction to restrain him. If you give notice to the party, he will do it before the time fixed when it is to be determined whether an injunction shall issue. Or it may be I am about to pay money which you have a right to prevent me from doing. If you give me notice beforehand I may pay it. In regard to waste, Judge Spelling in his book well brings out that point in regard to actions at waste. There has got to be, in order to maintain the thing for the court to exercise its jurisdiction upon, the power to issue its preliminary restraining order to hold the thing for its jurisdiction, and it is in regard to that very thing that the courts have pursued such an ingenious way of getting around such a prohibition as was in the act of 1793.

Then, under the exercise of the inherent power of what you term the judicial power also lies the power to defend its own jurisdiction, so far as it is necessary to support that power. To show you a similar case, you know there is prohibition in the statute against enjoining proceedings in a State court, and that was upon the statute book long before the proviso was put in in regard to excepting cases of bankruptcy. When they enacted the bankruptcy act of 1867, I think, they inserted that provision that is to be found in the statutes to-day; and there is an absolute prohibition on the courts against issuing injunctions to restrain proceedings in a State court. Do the courts obey it and respect it? What have been the decisions of the courts in regard to it?

I would call your attention in this connection to the case of *Sharon v. Terry*, 36 Fed. Rep., 365:

The prohibition against the issue of an injunction by a court of the United States to stay proceedings in a State court is found in section 5 of the act of March 2, 1793, and has been continued in force ever since. It is now contained in section 720 of the Revised Statutes, with an exception relating to proceedings in bankruptcy, and is as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Notwithstanding the very general terms of the prohibition, with the single exception mentioned, it has been settled that it does not apply where the Federal court has first obtained jurisdiction or where, the State court having first obtained jurisdiction, the case has been removed to the Federal court. In such cases the Federal court may restrain all proceedings in a State court which would have the effect of defeating or impairing its jurisdiction. It extends only to cases in which the jurisdiction of the State court has first attached. With its proceedings, then, no Federal court can interfere by injunction. In *Fisk v. Railroad Co.* (10 Blatchf., 520) the circuit court of the United States for the southern district of New York issued an injunction restraining that corporation from taking any steps in a State court to procure its own dissolution, and the effect of the statute in question was considered. Judge Blatchford, now one of the justices of the supreme court, in deciding the case, said:

"The provision of section 5 of the act of March 2, 1793 (1 U. S. Stat. L., 334, 335), that a writ of injunction shall not be granted to stay proceedings in any court of a State has never been held to have, and can not properly be construed to have, any application except to proceedings commenced in a court of a State before the proceedings are commenced in a Federal court. Otherwise, after suit brought in a Federal court, a party defendant could, by resorting to a suit in a State court, defeat in many ways the effective jurisdiction and action of the Federal court after it had obtained full jurisdiction of person and subject-matter. Moreover, the provision of the act of 1793 must be construed in connection with the provision of section 14 of the act of September 24, 1789 (1 U. S. Stat. L., 81, 82), that the Federal courts shall have power to issue all writs which may be necessary for the exercise of their respective jurisdictions. It may properly be considered as necessary for the continued exercise of the jurisdiction of this court over the corporation in question that it should be restrained from taking steps in a State court to put itself out of existence."

Well, Judge Field goes on and quotes other cases here to the same effect, and they are innumerable. Just consider what was the law. You hear it claimed that that act of 1793 is a justification for the enactment of legislation of this character, because it was upon the books for eighty years, and that it did not go from the books until the revision that went into effect in December, 1873. Yet you find that the courts construed that prohibition in connection with the other powers contained in the judicial act of 1789, and always endeavored to construe it so that it gave to the court the necessary power to issue an injunction, in order to preserve the thing which the court itself must thereafter pass upon.

That same doctrine is reaffirmed here in 193 U. S. in the case of *Julian v. Central Trust Company*, at page 14. I cite from page 112. This was where a sheriff of a State court proposed to sell the very property that had been conveyed by the decree of the Federal court; and the court says:

If the sheriff is allowed to sell the very property conveyed by the Federal decree, such action has the effect to annul and set it aside, because in the view of the State court it was ineffectual to pass the title to the purchaser. In such case we are of opinion that a supplemental bill may be filed in the original suit with a view to protecting the prior jurisdiction of the Federal court and to render effectual its decree.

In such cases where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding section 720, Revised Statutes, restrain all proceedings in a State court which would have the effect of defeating or impairing its jurisdiction.

Now, what is the judicial power? As I stated Thursday, it is power in controversies between parties to declare what the law is, to find the facts, apply the law to those facts, and then to formulate a decree; and when it is so formulated that is the expression of the will of the people through its organ as to what constitutes the law and establishes the relation between those parties as to those facts.

Now, there is this essential difference between a decree of a court of equity and a judgment of a court of law: That it is not necessary—we are speaking now about these matters of injunction—for the court to issue any process whatever to the party commanding him to obey the injunction.

The moment the decree is entered it stands as complete. The will of the people has taken effect upon it, and if anybody has knowledge in any respect of the existence of that decree and disobeys it the process of the court can issue to bring a party before it and punish him for attempting disobedience of that order. No further process is necessary to be issued; and on that point the committee is undoubtedly familiar with the decision in *re Lennon*, in 166 U. S., where the court says, page 554:

The facts that petitioner was not a party to such suit when served with process of subpoena, nor had notice of the application made by complainant for the mandatory injunction, nor was served by the officers of the court with such injunction are immaterial so long as it was made to appear that he had notice of an issuing of an injunction by the court. To render a person amenable to an injunction it is not necessary that he should have been a party to the suit when the injunction was issued, nor to have been actually served with a copy of it so long as he appears to have had actual notice.

The question occurs, of course, to every lawyer, Can the legislature forbid the court, when it has heard the case, found the facts, and made its decree, from issuing a process to bring the party before it on

attachment for the contempt? The language of the courts is unanimous on that subject; the legislature can not do it. The decree of the court in the form of the order is complete; no further action is necessary to give it effect upon all persons who have knowledge of it, and the inherent power of the court to enforce obedience to that order is complete, and no act of the legislature in taking away that power would be of any validity.

As I said the other day, in the first of *Deedy* is a case where Judge *Deedy* held that, notwithstanding this expressed prohibition on the courts to issue injunctions in any case, it did not prevent the issuance of a restraining order in bankruptcy, because otherwise it would be notice to a party to walk off with the assets of the estate, and the very jurisdiction of the court would be defeated. Consequently I contend most respectfully, gentlemen, that, under the well-established principles of jurisprudence, the power that Congress is asked to exercise here in regard to the final judgment or decree for an injunction, that the courts shall not issue any injunctions in such cases, would be a nullity, would be unconstitutional and void as beyond the power of Congress; and, in the second place, that the power to issue a preliminary injunction can not be denied to a court of equity so long as they have jurisdiction of the parties and of the case, provided the exercise of that restraining power is essential to maintain the rights of the parties. In most, if not all, of the classes of cases included in this bill such a power as that is necessary.

Mr. BIRDSALL. I suppose that would be reasoning in a circle. The court would issue the writ and then determine whether it had the power to issue it or not.

Mr. DAVENPORT. Well, may be that it would.

Mr. BIRDSALL. I don't know of any other way to arrive at it, I am frank to confess that.

Mr. DAVENPORT. Now, the contention is made here that there is something novel in the use of these injunctions in this class of cases. In the first place it is not confined to the Federal courts, because all the courts of the State exercise the power and the great body of the laws bearing on the subject has been built up by decisions of State courts; but I would like to read a short extract from a decision of a Federal court, from the case of *United States v. Sweeney and others*, 95 Federal Reporter, 434, where the court said:

The claim that the exercise of power to protect by injunction property and persons engaged in lawful business enterprises in proper cases and where the remedy at law is inadequate and the injury irreparable is new, or that such proceeding is a modern invention of the Federal courts, is as stupid as it is untrue. (*Consolidated Steel and Wire Company v. Murray* (1897), 80 Federal Reporter, 811).

In the last case cited Judge Sage reviews the history of injunction in a case in principle precisely on all fours with this one and shows by numerous citations that the remedy by injunction came to us from the courts of England and has been widely followed in this country by the courts in the several States. That case is instructive, as showing the first case in a dispute of this character occurred in England in 1868 and that that was ample authority for the injunction found in State decisions without citing a single Federal case. That the remedy by injunction has become more prominent in modern or recent times is doubtless true, and grows out of the ever changing conditions and evolutions in business incident to modern civilization. That the courts adapt themselves to these changing conditions and afford relief and preserve the personal and property rights of the individual citizen is a tribute to the conservatism and wisdom of both bench and bar. There is nothing either strange, novel, or extraordinary about these proceedings.

Mr. DE ARMOND. Whose opinion is that?

Mr. DAVENPORT. I can not say. The judge he is quoting from is Judge Sage.

Mr. SPELLING. What page is that?

Mr. DAVENPORT. That is page 434.

Mr. DE ARMOND. It makes a great deal of difference where these decisions come from; there are some very good judges and some extremely poor ones.

Mr. DAVENPORT. Yes; but I think the whole body of the law with the exception of the two or three minority opinions which our friend quoted is on this side.

Mr. SPELLING. Is that on the particular case or a mere declaration of the principle?

Mr. DAVENPORT. No; it is right here in the case.

This matter of a right to issue injunctions in these cases has been decided in every court of the United States and in every State of the Union, and the courts have uniformly upheld the right; that it is not an extension of the right by injunction, but that it is familiar. And while I am on that point let us see what Judge Spelling himself says in his book. I will cite a few from the text-books. The first one is in Bispham's Principles of Equity, section 492, where we find the following statement:

The relief afforded by the writ of injunction is probably the most effective, the most characteristic, and most extensive of equitable remedies. It is most frequently employed, as has been already stated, in its prohibitory form, and it is used to prevent injuries to property which are imminent, irreparable, and for which damages furnish an entirely inadequate redress. With the single exception of estrepement, no common law process exists by which injuries to property can be prevented as distinguished from being redressed; and hence the equitable remedy by injunction possesses a peculiar value, as furnishing a kind of relief which can be obtained in no other form. No remedy, either at law or in equity, can compare with the injunction in promptness and completeness; and hence no equitable remedy has been so frequently or extensively called into play or has contributed so much to extension of the jurisdiction of courts of chancery.

And in section 465, page 595, occurs the following statement:

The field of this jurisdiction is an exceedingly wide one, and scarcely any injury to the rights of property can be imagined where the writ would not issue, if the remedy at law was inadequate, and the only efficient redress would be the restraint of the commission or continuance of the wrongful act.

In Pomeroy's Equity Jurisprudence, section 1338, is to be found the following description of the general scope of the writ of injunction:

In determining whether an injunction will be issued to protect any right of property, to enforce any obligation, or to prevent any wrong, there is one fundamental principle of the utmost importance, which furnishes the answer to any questions, the solution to any difficulties which may arise. This principle is both affirmative and negative, and the affirmative aspects of it should never be lost sight of any more than the negative sides. The general principle may be stated as follows: Wherever a right exists, or if created by contract, by the ownership of property, or otherwise cognizable by law, a violation of that right would be prohibited unless there are other considerations of policy or expediency which forbid a resort to this prohibitive remedy. The restraining power of equity extends, therefore, through the whole range of rights and duties which are recognized by the law, and would be applied to every case of intended violation were it not for certain reasons of expediency and policy which control and limit its exercise. This jurisdiction of equity to prevent the commission of wrong, is, however, modified and restricted by consideration of expediency and convenience which confine its application to those cases in which the legal remedy is not full and adequate. Equity will not interfere to restrain the

breach of a contract, or the commission of the tort, or the violation of any rights, when the legal remedy of compensatory damages would be complete and adequate. The incompleteness and inadequacy of the legal remedy is the criterion which, under the settled doctrine, determines the right to the equitable remedy of injunction.

As to the use of the injunction as a remedy against trespass, Pomeroy's Equity Jurisprudence, section 1357, is as follows:

It is certain that many trespasses are now enjoined which, if committed, would fall far short of destroying the property or of rendering its restoration to its original condition impossible. The injunction is granted, not merely because the injury is essentially destructive, but because, being continuous or repeated, the full compensation for the entire wrong can not be obtained in one action at law for damages. While the same formulæ is employed by the courts of equity in defining their jurisdiction, the jurisdiction itself has practically been enlarged; judges have been brought to see and acknowledge—contrary to the opinion held by Chancellor Kent—that the common-law theory of not interfering with persons until they shall have actually committed a wrong, is fundamentally erroneous; and that a remedy which prevents a threatened wrong is, in its essential nature, better than a remedy which permits the wrong to be done, and then attempts to pay for it by pecuniary damages which a jury may assess. The ideal remedy in any perfect system of administering justice would be that which absolutely precludes the commission of the wrong, not that which awards punishment or satisfaction for a wrong after it is committed. I have placed in the footnote some illustrations of numerous particular cases in which the injunction has been granted, all depending upon their own circumstances, but all resting upon the same general principle that the legal remedy of damages is not adequate, and the ends of justice require the relief of prevention in place of mere compensation.

Now, let me quote from Judge Spelling's excellent work on injunctions. In section 1, page 2, where he quotes the definition from Jeremy's Equity, 307, it reads as follows:

A writ framed according to the circumstances of the case, commanding an act which the court desires essential to justice, or restraining an act which it esteems contrary to equity and good conscience.

See also same author, section 3:

Without the power to prevent as well as to undo wrongs, to restrain as well as to compel action, to preserve as well as to reinstate the status of persons and things, courts of equity would possess but little power and command but little respect as dispensers of justice and arbiters between man and man. The important restraining function is given effect by the great extraordinary remedy of injunction, which may be appropriately termed the strong arm of courts of equity. Its office is to require a party to do or refrain from doing a particular thing according to the exigency of the occasion as indicated on the face of the writ.

See also same author, section 11:

It is not used for the purpose of punishment or to compel persons to do right, but simply to prevent them from doing wrong. Indeed, it may be said that the use of the writ is confined to cases of a threatened actual wrong to the person or property of the person seeking it, and will not be granted to prevent mere abstract injury unconnected with actual damage or detriment.

See also same author, section 24:

Equity has no jurisdiction to interpose for the prevention of crime, or to enforce moral obligations, nor will it interfere for the prevention of illegal acts, merely because they are illegal. * * * Aid will not be extended by injunction to restrain the violation of public or penal statutes, or in any such case, in the absence of an injury to property rights. One reason for noninterference is a fundamental want of jurisdiction, another is the existence of an adequate remedy at law. In other words, the subject of equity jurisdiction is the protection of civil rights and private property and not the punishment or prevention of crime or immoral acts when not in connection with the violations of private rights.

As to the use of the injunction as a remedy against waste, see Spelling on Injunctions, section 256:

It would be observed if a party were compelled to stand by until the injury has been accomplished before applying for preventive relief in cases of this nature. Courts of equity grant relief upon proper showing to prevent threatened waste without waiting for its actual commission. Therefore it is sufficient, on demurrer, to sustain a bill for injunctions to stay waste and prevent removal of improvements that the bill alleges that complainant is the owner and is entitled to possession of the premises with the improvements, and that defendants are in possession and threaten to destroy the improvements, and are insolvent and unable to respond in pecuniary damages.

Well, now, there is another aspect of this matter to which I want to direct the attention of the committee briefly and specially.

When the Sherman antitrust act was passed, in 1890, Mr. Gompers has stated here that it was not supposed that it included labor unions, labor organizations in its operation. You are, of course, familiar with the act regulating commerce passed in 1887 and with the provisions of the Sherman antitrust act of 1890. The purpose of this so-called Little bill, or the old Grosvenor bill, so called—and probably it is the purpose of Mr. Spelling in his present bill—was to take the labor unions out from the operation of that statute. You remember its language, “Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade between States is declared to be unlawful” and is made criminal.

A provision was made that the district attorney, under instructions from the Attorney-General, can proceed to have the writ of injunction issued in such cases. The purpose of this proposed law is to repeal the Sherman antitrust act and whatsoever provisions there are in the act of 1887 regulating commerce between the States which are inconsistent with its provisions. I want to suggest this to you gentlemen: That if you do that you destroy the existing Sherman antitrust act, you destroy the act to regulate commerce, about which so much contest is being made at the present time.

Mr. SPELLING. Have not the courts already destroyed it?

Mr. DAVENPORT. I think not; I think they have given it the greatest vigor. Any lack of efficiency in that statute I observe in the enforcement of it rather than in the terms of the law. You know its terms: “Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade between the States is unlawful.”

Mr. SPELLING. That is the antitrust act?

Mr. DAVENPORT. Yes. Now, then, what do the labor unions do? The books are full of cases that are brought in civil courts to prevent boycotting. I have in mind particularly one in which I am myself engaged, where a hat manufacturer in the town of Danbury (Mr. Hewe) refused to unionize his shop in accordance with the demands of the union. They then called out his union men, and they then scared away his non-union men, and then they put eight men on the track of his salesmen, going all over the country, warning and threatening his customers that if they dealt with him they would boycott him; and if any of them did not at once yield, then they would go to their customers and threaten them, and it reached all over this country.

There was a clear case of a combination and a conspiracy in restraint of trade between the States. The courts have so held, in that particular case and in lots of others. It is the essence of a trust. As a gentleman explained here the other day, it is for the purpose of produc-

ing a monopoly and maintaining a monopoly, and to destroy everybody who will not surrender to that monopoly. Those who have in charge the enforcement of the laws are very vigorous in their pursuit of combinations of capital. They find them to be criminal, and they bring to bear upon those who are guilty of the offense all the power of the law.

Now, the purpose of this proposed law is to take such actions by labor unions out of the operation and purview of the existing statutes of the United States. Suppose you do it. What becomes of the rest of the law? Why, under the familiar principles applied to the interpretation of the fifth amendment of the Constitution, if you attempt to discriminate in the way that is attempted here, and have one law for one class of people and not for another, you not only deprive them of the due process of law, but you invalidate the rest of the law. I throw out this suggestion. I have talked as long as I can ask you to listen to me, but I throw out this suggestion: That if the bill which is introduced this time by Mr. Little should become a law—the late Grosvenor bill—the necessary effect of the enactment of it would be the destruction of the existing Sherman antitrust act, and also, as Mr. Bond two years ago pointed out, those provisions of the act relating to interstate commerce which were considered in the great case before Judge Taft in the strike of 1892.

Mr. PALMER. Are there any other gentlemen that want to be heard?

Mr. FULLER. If the other side is through, we want to make reply to what has been said.

Mr. DAVENPORT. As far as I am concerned, I am through, but I suppose there is no objection to the gentleman, if he cares to be heard, being heard now; but I understand that there are other gentlemen who desire to be heard. For instance, Mr. Levi Mayer, I understand, wants to be heard.

Mr. SPELLING. Mr. Newcomb is here. I would like to know whether he wants to be heard.

Mr. DE ARMOND. I would like to ask you about that act of 1831 which was passed following the Peck impeachment case and growing out of it. Have you thought of the constitutionality of that law?

Mr. DAVENPORT. I can not do better than quote what the supreme court of Virginia said.

Mr. DE ARMOND. You would do better if you would quote what the Supreme Court of the United States said.

Mr. DAVENPORT. Well, they do quote what the Supreme Court of the United States says. There is nothing in that act which impairs the essential power of the court.

Mr. DE ARMOND. There is a provision in it for trial after indictment of certain things called contempt, instead of summary punishment by the court.

Mr. DAVENPORT. I would like to call the attention of the committee to what the court in Virginia says, quoting from the court in the Carter case, 32 Southeastern Reporter, page 780:

The legislature may regulate the exercise of, but can not abridge, the expressed or necessarily implied powers of this court by the Constitution. If it could, it might encroach upon both the judicial and executive departments and draw to itself all the powers of Government, and thereby destroy that admirable set of checks and balances to be found in the organic framework of both the Federal and the State institutions and the favored theory in the government of the American people. As far as the act in question goes in sanctioning the powers of the court to punish as con-

tempts the acts therein enumerated, it is merely declaratory of what the law was before its passage. The prohibitory feature of the act can be regarded as nothing more than the expression of a judicial opinion by the legislature, and that the courts may exercise and enforce all their constitutional powers and answer all the useful purposes of their creation without the necessity of punishing as a contempt any matter not enumerated, not in the act. As such, it is entitled to great respect; but to say that it is absolutely binding upon the courts would be to concede that the courts have no constitutional and inherent power to punish any class of contempts, but that the whole subject is under the control of the legislative department, because if the general assembly may deprive the courts of power to punish one class of contempts it may go the whole length and divest them of the power to punish any contempt. Reliance was placed by counsel for plaintiff in error upon a class of cases of which *ex parte Robinson*, 19 Wallace, 505, may be considered typical.

That, as you remember, was where the court disbarred an attorney without hearing, simply because he was guilty of some contempt.

In that case *Robinson* had in the most summary manner, without the opportunity of defense, been stricken from the roll of attorneys by the district court for the western district of Arkansas. He applied to the Supreme Court for mandamus, which is an appropriate remedy to restore an attorney who has been disbarred, and that court held, Mr. Justice Field delivering the opinion, that the power to punish for contempts is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, the orders and risks of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction, they became possessed of this power, but the power has been limited and defined by the act of Congress of March 2, 1831, and the court declared that there could be no question as to its application to the circuit and district courts. These courts were created by act of Congress. Their powers and duties depend upon the acts calling them into existence or subsequent acts extending or limiting their jurisdiction. The act of 1831 was therefore to them the law specifying the cases in which summary punishments for contempts may be inflicted.

Mr. DE ARMOND. That is the Supreme Court?

Mr. DAVENPORT. That is quoting from Judge Field.

Mr. DE ARMOND. Now you are about to bring the court of Virginia against him?

Mr. DAVENPORT. I am going to bring the light of the court of Virginia to bear upon this subject.

Turning to the Constitution of the United States we find that it (Art. III, sec. 1) declares that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. This language is the equivalent of that found in our Constitution prior to that of 1851 hereinbefore quoted. The inferior Federal courts and their jurisdiction are the creatures of Congress and not of the Constitution.

It may be remarked also with respect to the case of *ex parte Robinson* that the United States statute of 1831, while it carefully enumerates the subjects for which courts may punish summarily for contempt, that enumeration is so comprehensive as to afford complete protection to the courts in the performance of their duties and contains no limitation whatever upon the power to punish in the enumerated cases, and that while punishment which courts may inflict is limited to fine and imprisonment, their discretion is without limit as to the amount of fine or the duration of the imprisonment. The courts of the United States will never be embarrassed by the decision in the case of *ex parte Robinson*; for while the power to disbar an attorney is denied in that case as a proper punishment for contempt, the jurisdiction of the courts to disbar after citation to appear and notice of the ground of complaint against and an opportunity for explanation and defense is fully recognized. It were an unprofitable task to attempt to review within the limit of an opinion all the adjudged cases to which our attention has been called and which with very many others have been considered by us. For the benefit of those who may feel themselves moved to a further investigation of this subject we cite without comment the following cases:

Mr. DE ARMOND. Who delivered that opinion?

Mr. DAVENPORT. Judge Keith. Now, so far as I have observed, all the courts say that this inherent power of the court to punish for contempt is not unlimited; that is to say, as I illustrated the other day,

hey could not hang a man for having committed a contempt. There are certain limits to that which the legislature can define. But the moment that it approaches the line where the essential necessary power of the court is impaired, then the act of the legislature is a nullity and that inherent judicial power in the court extends to doing things preliminary, as well as doing things finally. Whatsoever is necessary for it to do in order to maintain the jurisdiction which the legislature has conferred upon it, its power over the cases which the legislature has given it cognizance of is inherent, and whensoever anything is attempted to be done that takes away the judicial power within the field of that jurisdiction it is void.

Mr. DE ARMOND. The court really holds, in that Robinson case, the power of the court may be circumscribed by the legislature—by Congress?

Mr. DAVENPORT. It does, expressly; but, as Judge Keith says, the act was sufficiently liberal in its terms; the field left for the court was sufficiently broad to enable it to do everything that was essential. That case of *ex parte Robinson* could not be held to be an authority that the legislature could go beyond and strike down those inherent powers altogether.

Mr. DE ARMOND. No; but I understand that the court held there, in the opinion delivered by Justice Field, that the act of 1831 applies.

Mr. DAVENPORT. Yes.

Mr. DE ARMOND. And control the courts created by Congress?

Mr. DAVENPORT. Yes, sir; that is to say, that where it prohibited them from disbarring an attorney.

Mr. DE ARMOND. In other words, that the inferior courts created by Congress as to this matter of contempt were bound and limited by the statute of 1831?

Mr. DAVENPORT. Yes; that is very true; but that is not saying that an act that still further restricted them would be held constitutional. That does not follow. On the contrary, the clear implication is that when the act does impair the essential power of the court, then it is unconstitutional.

Mr. DE ARMOND. That is reasoning outside of what is said there?

Mr. DAVENPORT. Yes.

Mr. PALMER. What the act really did was to regulate the manner in which the court might enforce penalties for contempt; that is, it provided that certain contempts should be called direct contempts and that such contempts might be punished summarily, and that other contempts were indirect contempts, and could only be punished after the finding by a jury. So it seems to me it did not limit the power of the court to punish contempt; it only regulated the method in which they should exercise that power.

(Thereupon, at 1 o'clock, the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee met at 2 o'clock, pursuant to the taking of recess.

Mr. DAVENPORT. In Mr. Spelling's statement on the 12th of April, as printed in the record, at page 18, occurs the following with reference to a case which arose in the District of Columbia:

Mr. SPELLING. In answer to that I want to give you another instance. It happened right here. I want to say, lest I may be supposed to admit something, that these injunctions are increasing. They go on being issued with increasing rapidity and in

increased numbers. But I want to call your attention to one instance in the city of Washington within the last two weeks. The judge of one of the courts, upon a complaint filed by the Typothetæ, which is an association of employing printers of the United States, issued what was called a "restraining order" against the strikers.

The typographical union—the members of the typographical union—are on a strike. The whole union is not on a strike. Most of them are at work; but the whole union is backing up those who are still out on strike. Now, it happens that heretofore the unions have been working, I think, nine hours a day, and now they refuse to work any longer except at eight hours a day. And, gracious, is not eight hours of that kind of work enough? I know something about it. It is more trying on the nerves; it is more exhausting to the vitality and to the eyes—it is usually done by artificial light—than the hardest kind of study. Are not eight hours enough? But probably it does not become me to argue the merits of that question.

That is my view—that eight hours are enough. At any rate, the union stood for an eight-hour day in the printing offices. It happens that these employing printers have a lot of men employed on time contracts at nine hours a day. That time contract means this: That they pay the men every week, and they are to stay with them, I believe, for a certain time, at so many dollars a week. Some of the members of the union went to these men who were working on time contracts and told them that they had a right to quit; that the employers might sue them for damages if they had any case against them for quitting, but that that was the only consequence which could ensue; that they could quit.

I do not know much else there is in this case; I do not care to go into all the facts. But these are substantially the facts: The Typothetæ goes into court and says that the union men are persuading these contract workers to violate their contracts, and thereupon the court assumes jurisdiction. Like a great guardian of morality or spiritual oracle of everything in this city, notwithstanding that there are adequate remedies at law for the violation of those contracts, he takes cognizance of the moral question involved in giving this advice. And there is nothing surely that I might say—I mean it is not necessary for me to defend the morality of the men violating these contracts—but you gentlemen know that a court of equity has no business to interfere if I advise a man to violate a contract or to do or not to do anything else. That is a specimen of what is going on in this country under the cover of the judicial ermine.

Now, as I make it a rule in regard to all these injunctions which are made the subject of attack, I have obtained a copy of the opinion delivered by Judge Stafford in the supreme court of the District of Columbia in that case, the case of Byron S. Adams and others against the Columbia Typographical Union No. 101, and others in equity No. 26005, on deciding the motion for a preliminary injunction, and I desire to incorporate that in my remarks as a portion of them to go into the record, in order that every member of this committee may see precisely what the case and precisely what the points decided were and precisely the reasoning of the court and how completely they negative the claim of Mr. Spelling in regard to that particular case.

Mr. SPELLING. Is there any objection to filing the order itself?

Mr. DAVENPORT. Well—

(Mr. Spelling produced the order referred to and handed it to the stenographer.)

Mr. SPELLING. By the way, I might file three more. One is from the Commonwealth of Massachusetts and the other is from the district court of the United States in the district of Alaska.

The CHAIRMAN. Perhaps it would be well to let them go in with your remarks, rather than with Mr. Davenport's.

Mr. SPELLING. I would like them to go in in connection with what Mr. Davenport has offered.

Mr. PALMER. What is the purpose of filing that? What do they prove?

Mr. SPELLING. They show what kind of restraining orders the courts have been granting in these strike cases.

Mr. PALMER. What is the matter with them?

Mr. SPELLING. The proponents of the bill make one claim in regard to them, and those in opposition make another. I should think the materiality of the orders themselves would be obvious.

Mr. PALMER. I just wanted to know what you filed them for.

Mr. SPELLING. So the committee can see what we are talking about. They probably might not be able to see it if we did not file them.

The papers handed to the stenographer are as follows:

[In the Supreme Court of the District of Columbia. *Byron S. Adams and others v. Columbia Typographical Union, No. 101, and others.* In equity. No. 26005.]

OPINION BY STAFFORD, J.,

ON DECIDING THE MOTION FOR A PRELIMINARY INJUNCTION.

In preparing the following opinion the attempt has been made to use the language of the people rather than the language of the profession. Technical phrases have been avoided, and consequently it has been necessary to forego to some extent the terseness and precision which are to be gained by the use of such terms. This course has been adopted because the subject is one of interest to many who are unfamiliar with the terms of law, while perfectly able to comprehend and appreciate its foundation in reason and common sense.

This case has come before the court upon an application for an injunction. Those asking for the injunction are individuals, corporations, and firms engaged in the business of job printing in this city. Those against whom the injunction is asked are printers and a union of which they are members and, some of them, officers. The complainants may be referred to as the employers and the defendants as the workmen. Most of the employers belong to an organization called the Typothetæ, and the case is sometimes spoken of as the case of the Typothetæ against the Union, but the Typothetæ itself is not a party to the case. The workmen were formerly employed by those who are now asking the injunction, and a strike was ordered by the union because the employers would not adopt an eight-hour day, and since the 4th of January, 1906, the workmen have been out on strike. The employers have filed a bill of complaint against the workmen setting out various things which the workmen are claimed to have done by way of interference with the employers' business, and the workmen have filed their answer to these charges. Affidavits were filed in support of the bill, and others have been filed in support of the answer, and the case has been heard upon these papers. The bill was filed January 31, 1906, and, of course, the affidavits that were filed with it related entirely to matters that had occurred before that time; but the employers have taken other affidavits relating to matters that have occurred since the filing of the bill, and these also have been read in support of it. After the bill was filed the employers took additional affidavits in regard to matters that had occurred before they filed the bill, but these the employers have not been allowed to read because the court thought they ought not to be allowed to strengthen their bill by going back and bringing in new affidavits in regard to matters which they might have covered at the time the bill was filed. The workmen have been allowed to file affidavits answering all charges made against them either by the bill or by any of the affidavits which the employers have produced.

The substance of the employers' complaint is that when their workmen left them on strike they employed and brought in other workmen to take their places, and would have been able to carry on their business successfully and perform the contracts they had in hand if they had not been interfered with by the defendants; but that the defendants have interfered with their business by inducing or compelling their new employees to quit their service. Some of these new employees, the employers say, were under binding contracts to work for stated periods, so that they had no right to quit when they did. Others of them, the employers say, were not under binding contracts to work for any stated period, but would have continued to work if the defendants had not annoyed, molested, and in some instances threatened them to such an extent that, contrary to their own choice and preference, they left their employers' service. The employers also complain that the defendants have undertaken to interfere with their business by representing to the public, and especially to the employers' customers, that if they continue to patronize the employers, they will have difficulty and annoyance in getting their work done, and they complain that this representation is so expressed as to constitute a threat. The individual defendants all belong to the union, known as Columbia Typographical Union, No. 101, and while they are on strike they are receiving benefits under the rules of that organization. The employers complain that the defendants maintain pickets on the streets and in the vicinity of their respective shops who meet their workmen when they are on their way to and from work, and insist on talking with them and attempting to persuade them to leave their jobs and join the union. The employers complain that even after they have been told repeatedly by their workmen that they do not care to discuss the matter with them, and wish only to be let alone, the pickets insist on meeting them, and following them about the street, sometimes in groups of two or three, sometimes in larger numbers, and arguing with them and importuning and entreating them to leave their employers and join the union. The employers complain that in some cases such pickets or committees have surrounded their workmen and carried their importunities so far as to amount to intimidation and coercion, and that in many cases their workmen have yielded to such pressure and left their service. The employers complain that in some cases the defendants or other members of the union have used threats, sometimes clear, and sometimes veiled, but well enough understood by their workmen; that these threats have led their workmen to apprehend with some reason that if they continued in their refusal to join the union they would be hardly dealt with by that body or its members, and might suffer physical injury. The affidavits introduced by the employers, when considered by themselves, certainly have a tendency to establish all these charges.

On the other hand, the substance of the defendants' claim is that they have never interfered with the employers' business in any of the ways charged. They say that they have never attempted to persuade any of the employers' workmen to quit their service if they knew or believed such workmen to be under binding contracts with their employers. They say that the contracts under which such men were working were not binding. They admit that they have constantly and consistently attempted to persuade the employers' workmen to leave their service and join the union, but they say that they have used only

peaceable persuasion, that they have not annoyed, harrassed, or molested such workmen, although they have freely talked with them whenever they could obtain a hearing. They deny that they have ever made use of threats of any sort, and although they admit that all their efforts and the strike itself have been directed to the end and object of compelling the employers to adopt an eight-hour day, yet they have not employed any of the forbidden means complained of by the employers. The affidavits filed in support of the answer are drawn with a view to meet the various charges, and in many instances are specific and meet the issue squarely.

There is no great difficulty in stating the rules of law which apply to a case like this. They are only the rules of reason and justice, which must commend themselves to all unprejudiced persons who value their freedom. If A desires to employ B to work for him, and B desires to be employed by A to work for him on his terms, C has no right to interfere between them. It makes no difference that C formerly worked for A nor that he would be glad to work for him again in place of B. The right of B to work for A, and the right of A to have B work for him, under those circumstances can not be questioned. C can have no excuse for interfering with their arrangement. To speak bluntly, it is none of his business. If A represents ten men and B represents a hundred, the rule is exactly the same. If B has entered into a binding contract with A to work for him for a stated period, he can not break that contract without making himself liable in damages. A has a property right in that contract. If C persuades B to break such a contract, C himself becomes liable to A for the damages. There is nothing new about this rule of law. It has been recognized in England and in this country for centuries. If several men agree and combine together to persuade A's workmen to break their contracts of service for the purpose of ruining A's business and compelling A to employ them instead, the court will issue an injunction forbidding them to do so; and if they disobey the injunction the court will punish them for contempt of its order. The reason why the court will issue an injunction in such cases is that it would be difficult and perhaps impossible to protect A by any other means. If they should be allowed to accomplish their purpose, A would be obliged to sue them for damages, and he might be obliged to bring a great many suits, and it might be impossible to determine how much his business was worth. A has a right to be let alone and allowed to conduct his legitimate business in his own way, without waiting till it has been ruined before seeking the aid of a court. These rules of law are nothing new. They have been established by a multitude of decisions in England and in this country.

In such cases the parties attempting to break up A's business are using unlawful means—that is, they are inducing A's workmen to break their contracts; but how is it in those cases in which A's workmen are not under binding contracts with him? In such cases the workmen have a right to leave at any time, and it is not unlawful to argue with them and persuade them that it is for their interest to leave. The result may be that A's business will be ruined just as truly as in the other case, but no unlawful means are being used. Men have a right to form and entertain their own opinions and to discuss and to advocate them, and to convince and persuade others to adopt and follow them, even though the result may be pecuniary loss or ruin to the

employers. Even when the object and purpose of such argument and persuasion is to make it impossible for the employer to carry on his business without coming to the terms proposed by the advocates, the law can not interfere. The right of free opinion, and free speech, and free action, within the bounds of law, are of more importance than any man's business, and so the law will not undertake to protect his business at the expense of these.

But the moment the attempt is made to overbear the will of those who wish to enter or continue in the employers' service that moment the bound is overstepped and the means used become unlawful. B has just as good a right to work for A as C has to refuse to work for him, and any attempt to compel him to leave the service when he desires to remain in it is unlawful. It is a wrong against B and it is a wrong against A. It makes no great difference what the means employed may be. It may be done by threats of injury; it may be done by calling vile names; it may be done by obtruding constantly and offensively upon his presence; it may be done by calling attention to him in public in disagreeable ways; it may be by following him about the street or waiting for him where he must pass; it may even be done by importunities and entreaties if made and offered by such numbers and in such a manner as to be a serious source of annoyance and molestation tending to destroy that peace of mind which law-abiding citizens of a free community have a right to dwell in. In short, it may be done by any means which have the natural effect to override and overbear the will of a man of ordinary firmness and move him to do what he does not wish to do for the sake of escaping from those who thus pursue and worry him.

It may be that C really believes that it is for the interest of B as well as for the interest of C that B should quit the employment of A. It may be that C believes that it is for the interest of all his fellow-workmen that B should quit the service of A, and that nobody should work for A upon the terms which A offers. C may be thoroughly convinced that the conditions of labor will be greatly improved if A is compelled to conduct his business in some other way. All these considerations are of no consequence in determining what the law is and should be in a case like the one supposed. There is something more important than fair wages, and that is the right to work for any wages the workman is willing to accept. There is something more important than an eight-hour day, and that is a free day. Any enhancement of wages, any lessening of the hours of labor, any improvement in the conditions of employment, would be too dearly bought by the surrender of the smallest fraction of individual liberty under the law. Workmen themselves are the last men in the world who should willingly suffer the loss of such a right. That is about all they have gained, or that has been gained for them, in the long struggle for rights which have been going on since the beginning of organized society. Individual men, even great classes of men, may lose sight of its importance for a time in their desire to secure some coveted advantage, but the law does not lose sight of it, and so long as the ancient landmarks of our jurisprudence are observed these rights will be safe.

No better definition of freedom has ever been given than this: That one man's liberty ends where another man's liberty begins. Union men would think themselves unjustly treated if they should be impor-

tuned and besought, picketed, followed about the streets, and made objects of ridicule and contempt because they refused to leave the union, or because they refused to continue in the service of an employer they did not care to serve. They should be willing, and the law requires them, to treat their fellow-laborers as they would insist upon being treated under the same circumstances. It makes no difference how large may be the majority of those who believe that their interests are best protected inside the union nor how few and deluded are those who take the opposite view. It makes no difference how great an obstacle to the laudable purposes of the union a few misled or disloyal associates may be. It is a question of individual right. Those who wish to surrender a part of their individual freedom of action for the sake of the larger benefits that may be gained through union have an unquestioned right to do so. The law recognizes their right and gives standing to the union itself, but the right of those who choose to remain outside is just as sacred and inviolable in the eyes of the law.

The real difficulty in the present case has been for the court to satisfy itself by the mere reading of affidavits exactly what has occurred. Such of the parties as have shown themselves in court have presented a very favorable appearance. It is difficult to believe that such men have deliberately intended to transgress the law. So far as they may have done so they must have been carried away by zeal for their cause, and probably without fully appreciating the meaning and effect of their acts. But in deciding what probably did occur we are to remember that the union and its members were carrying on what seemed to them a sort of warfare to secure better conditions for themselves and their fellow-craftsmen. Being out of employment themselves, many of the defendants devoted their whole time to winning the strike. It was a matter of intense personal interest to them. They appointed committees, which they themselves styled "vigilance committees," and other committees on the eight-hour day. They were so eager to prevent the complainants from securing employees to take their places that they boarded the trains and traveled many miles away from the city to meet and argue with men who had been employed to come and work for the complainants. They employed every form of argument and persuasion to induce them not to enter the employment at all, or, if they had already entered it, to abandon it at once. They endeavored to persuade the complainants' workmen to join the union and take the strike benefits, although such workmen were men who they now say were entirely unworthy to associate with honorable men. They were willing to pay one man over \$40 to induce him to leave the city, beside cashing for him an order upon his employer for nearly \$20 of wages. They followed and besieged the workmen with arguments and entreaties whenever they appeared upon the street, and carried on a systematic campaign with the avowed purpose of depriving the complainants of all their workmen. It seems entirely clear that in many instances they pursued this course with those who had plainly told them that they did not care to be argued with and only desired to be let alone. These things are referred to as showing the eagerness and zeal with which the union and its members have been animated. When the complainants' employees have given as a reason for not joining the union the fact that they were already under contract with the complainants, or some of them to work for stated periods,

the defendants have been quick to inform and earnest to convince them that their supposed contracts were absolutely worthless. Some contracts which have been shown the court are beyond all doubt binding contracts, and if the defendants believed that they were not, that belief can hardly excuse them. Some of the affidavits made by the defendants in reply to those supporting the bill do not, like the others, meet the issue squarely. They do not attempt to state the conversation which did occur, but characterize it with general expressions which quite likely take their color from the interest of the affiants. In many instances the defendants have succeeded in persuading or inducing employees of the complainants to go away. A considerable number of those so quitting have made affidavit that they did so of their own free will and accord. Others say that they left under the sort of pressure that has been referred to above. It was naturally to be expected that those who were persuaded to quit the complainants and join the union would not willingly give further aid or comfort to the side they had left. It has been strongly argued that it is absurd to suppose that any unlawful pressure could have been used upon those who did finally consent to join the union or who did, after the acts complained of, go to the union headquarters and talk freely with the officers of that body. Such argument proceeds upon the theory that the intimidation must have been of personal violence, and of such a character as to entirely drive away the person against whom it was used; but that is not the most common nor the most effectual method of overbearing the will of the new employee. Such threats, if resorted to at all, would be the last resource, and would only be used against those who could not be brought in by the milder forms of coercion. The court is inclined to believe that on some occasions there were covert suggestions of personal injury as being likely to result to those who continued to oppose the purpose of the union; but however this may be, it has little doubt that workmen in the employ of the complainants who were bound by contract to serve them for stated periods have been induced by the defendants to break their contracts and leave the service, and that many others who would have entered the service or were already employed and would have continued in the employment, have been withdrawn from the service of the complainants by acts of the defendants which have amounted to coercion under the rule above stated.

It would be tedious and would probably serve no useful purpose to analyze the affidavits and make distinct findings of fact in regard to particular witnesses. The question is not whether the proof is so satisfactory that if the proceeding were one brought to have the defendants punished for contempt of a previous injunction the facts would be found sufficiently established to justify fine or imprisonment. It is rather a question of probable cause. The application is for a preliminary injunction to remain in force until the case can be fully tried. Upon all the testimony taken together does it fairly and reasonably appear that the bounds of law recognized and stated above have been overstepped so often and to such an extent as to justify the belief that the complainants' rights are being invaded and will continue to be invaded and their business threatened with ruin unless the court shall interfere? After a careful and deliberate examination of the testimony the court finds itself possessed by an abiding conviction that the case

is one which calls for its aid, and that the defendants ought to be enjoined, pending the suit, from interfering with the complainants' conduct of their business by attempting to persuade their employees, who are under contract, to quit their service, or by attempting to coerce their other employees into leaving their service, or attempting to coerce others from engaging in their service.

The bill also prays for an injunction against the use of the boycott. Some expressions in articles issuing from the defendant union during the early stage of the controversy hinted of interruptions and delays that would attend the performance of work by the complainants for their customers, and upon that ground recommended such customers to employ only union shops. But the later emanations from the union seem to have kept carefully within the bounds of the law, and it is considered unnecessary at this time to issue any injunction against a boycott. If the occasion for such an injunction should arise it can be moved for hereafter.

[In the supreme court of the District of Columbia. Byron S. Adams et al., defendants, v. Columbia Typographical Union No. 101, and others, complainants. In equity No. 28006. Docket 58.]

INJUNCTION ORDER.

This cause having been heard upon the motion for a preliminary injunction, it is, after due consideration,

Ordered that an injunction issue restraining the defendants, said union, and all members thereof, and all persons acting under their authority, from interfering with any of the complainants in the conduct of their business for the purpose of preventing them from conducting the same in their own lawful way, or of compelling any of them to yield to the demands of the defendants touching the manner in which such business shall be conducted:

1. By attempting to induce any of their employees who are under contract to remain in their service to break such contracts and leave said service, or

2. By attempting to coerce any of their actual employees into leaving their service, or any of their intending employees not to enter their service, by the use of personal violence or any threat of the same, by use of opprobrious epithets applied to such employees, by following such employees about the streets against their will and request, by persistently surrounding and importuning and entreating such employees against their will and request. By meeting and intercepting such employees on their way to and from work for the purpose of doing any of the things above forbidden, by harassing, annoying, or molesting such employees, by any other means of the same general nature as those above forbidden. Such an injunction to remain in force during the pendency of this proceeding or until the further order of the court. The undertaking required by rule 43 to be first filed.

WENDELL P. STAFFORD, *Justice.*

Marked filed March 30, 1906.

[In the United States district court for the district of Alaska, second division. E. W. Johnston, plaintiff, v. Federal Labor Union, Nome City, Alaska, et al., defendant.]

ORDER OF INJUNCTION.

Now, on this 15th day of August, A. D. 1905, this cause coming on to be heard upon the application of the plaintiff for a restraining order and injunction against the said defendants and against all other persons whomsoever acting in collusion or in connection with them, or any of them, and all other persons, restraining all such persons from in any way doing or attempting to do any of the acts complained of in the complaint herein; and it appearing to the court by the complaint and the affidavit of John Rigby, filed herein, that a restraining order and injunction should be issued during the pendency of this action, or until further order of the court, in accordance with the prayer of the said complaint, and the plaintiff having given a bond in the amount fixed by this court:

Now, therefore, it is hereby ordered, adjudged, and decreed by the court that the said defendants, and each and all of them, and all persons acting in connection with them, and all persons whomsoever, are hereby restrained and enjoined from in any way or manner interfering with, hindering, obstructing, or in any manner delaying or stopping the building and construction of the improvements at the mouth of Snake River, in Nome, Alaska, by the said plaintiff or anyone acting by, through, or under him, and of the buildings, structures, construction, or machinery now being built or placed upon or hereafter to be built or placed upon the same or any part of the said improvements, and from picketing the works and business of plaintiff, or from interfering in any way with any of the employees of plaintiff, and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employees of the plaintiff to leave the employment of plaintiff, or to refuse or fail to perform any of their duties as employees of said plaintiff, and from attempting, by threats, force, or violence, to prevent any person whomsoever from entering the employment of plaintiff, and from aiding, assisting, or abetting in any manner whatsoever any person or persons to commit any or to attempt to commit any of the acts aforesaid.

And it is further ordered that this injunction order shall be in force and binding upon said defendants from and after the service upon them, severally, of this injunction order, or from the time that any of said defendants have knowledge of this order, or upon the reading of this injunction order or a copy thereof to any of said defendants by any person, or by the publication of this order by posted or printed copies thereof, and upon all persons whomsoever, whether named or not, when they shall have knowledge of the making of this order.

Done in open court this 15th day of August, 1905.

Witness the Hon. Alfred S. Moore, judge of the United States district court, district of Alaska, second division, and the seal of said court hereto affixed this 15th day of August, A. D. 1905.

[SEAL.]

ALFRED S. MOORE,
*United States District Judge,
Second Division, District of Alaska.*

Attest:

GEO. V. BORCHSENIUS, *Clerk.*
By ANGUS MCBRIDE, *Deputy.*

UNITED STATES DISTRICT COURT,
District of Alaska, Second Division.

I, George V. Borchsenius, clerk of the United States district court for the district of Alaska, second division, do hereby certify that I have compared the foregoing copy with the original order of injunction in re *E. W. Johnston v. Federal Labor Union, Nome City, Alaska et al.*, No. 1377, now on file and of record in my office at Nome in the district of Alaska, and the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court, this 15th day of August.
 A. D. 1905.

[SEAL.]

GEO. V. BORCHSENIUS, *Clerk.*
 By ANGUS MCBRIDE, *Deputy.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

To William H. Frazier, George Y. Small, Alfred McDonnell, John Thormer, John Lind, all of Boston, in our said county of Suffolk, and all other officers and members of the voluntary association called the Atlantic Coast Seamen's Union, their agents, attorneys, and counselors, and each and every one of them, greeting:

Whereas it has been represented unto us, in our superior court, by Leroy K. McKeown, Joseph Donnell, S. R. Crowell, William F. Palmer, all of said Boston, Gardner G. Deering, William T. Donnell, both of Bath, in the State of Maine, and the members of the following firms: John S. Emery & Co., of said Boston; Percy & Small, of said Bath; J. S. Winslow & Co., of Portland, in the State of Maine; Pendleton Brothers, of New York, and Crowell & Thurlow, of said Boston, complainants, that the said complainants have exhibited a bill of complaint in our said court against you, the said respondents, wherein said complainants, among other things, pray for a writ of injunction against you, the said respondents; we therefore, in consideration of the premises, do strictly enjoin and command you, the said respondents and each of you, and all and every persons before named, to desist and refrain from interfering with the business of the complainants or any of them, by the use of threats, force of intimidation with any one seeking employment as seamen with any of the complainants or their agents, or by the use of promises to pay board, or by any other persuasive inducement or act, to induce seamen to break or violate any of their shipping contracts with the complainants or their agents until further order of our said court or some justice thereof.

Witness, Albert Mason, esq., at Boston, the 29th of February, in the year of our Lord 1904.

GEORGE E. KIMBALL,
Assistant Clerk.

Mr. FULLER. If the other side is through, we are ready to go ahead.

Mr. DAVENPORT. As I stated this morning, I don't know anything about it, but I understand that Mr. Levi Mayer, of Chicago, desires to appear here at some day for the purpose of discussing these questions.

The CHAIRMAN. That will be for the full committee to determine.

STATEMENT OF MR. H. B. FULLER.

The CHAIRMAN. It may be a little irregular for us to go ahead until the other side has closed, but, as I have expressed myself before, I would like to see this hearing closed, so I will proceed.

I wish to first say a few words with regard to the arguments of Brothers Furuseth and Gompers against the Gilbert bill, and I regret that they are not present.

Mr. Furuseth says it is an arbitration bill, and, as I understood him, will make the judge the arbitrator in all labor disputes in which an injunction is asked. I do not agree with him in this opinion, neither am I able to strike any line of reasoning whereby such a conclusion is justified. This bill does nothing more and nothing less than to require that hereafter in labor disputes an injunction or a restraining order shall not be issued without giving the adverse party an opportunity to be heard, instead of issuing them *ex parte* as heretofore. It gives no new authority to issue such writs, for it is expressly provided in the bill that nothing in it shall be held to authorize the issuing of a restraining order or an injunction where the same is not authorized by existing law.

If it makes a judge an arbitrator of all questions in a labor dispute simply because he is required to give notice before he can issue an injunction, then from 1793 to 1872 the judges were arbitrators of all questions in every dispute in which either a temporary or permanent injunction was sought, for during that period of seventy-nine years neither a temporary nor a permanent injunction could be issued without notice.

If the judge is to be the arbitrator because the bill applies only to labor disputes, then he must now be the arbitrator of all questions in patent cases, for there is a law giving the courts the power to issue injunctions in patent cases in any way they may think proper. If he is to be the arbitrator because the bill applies only to labor disputes, then how about the Little bill, or the Hoar-Grosvenor bill, which we all favored. They apply only to labor disputes.

It has been said if the President knew the effect of this bill and advocated it, he was no friend of labor. I think we can well presume that the President of the United States knows, or at least contemplates the effect of legislation which he recommends to Congress; and I do not think it will be seriously contended that he did not recommend this bill in his last message.

As to the friendship of Theodore Roosevelt for labor, I think his past actions speak louder than words. While police commissioner of the city of New York he not only made the police permit striking workmen to picket, but he also required them to protect them in that right. As governor of the State of New York he recommended labor legislation to the legislature of that State. He was the first and only President to indorse labor organizations in a message to Congress, and recommendations for labor legislation have occupied prominent places and filled many pages in his annual messages to Congress from the first one down to the one to the present session. And since he has been President of the United States the White House doors have swung as freely to the representatives of labor as they have to Mr. J. Pierpont Morgan or Mr. A. J. Cassatt.

Mr. SPELLING. Will you allow me to ask you—I want to get the

record straight—whom you represent? Do you represent the Administration?

Mr. FULLER. What Administration do you have reference to?

Mr. SPELLING. The present one. Whom do you represent?

Mr. FULLER. I represent the Brotherhood of Railroad Trainmen, the Order of Railway Conductors, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen, or, I might say, I am trying to represent them.

Mr. SPELLING. Who are the officers of the trainmen?

Mr. FULLER. Do you question my authority?

Mr. SPELLING. Well, please—

Mr. FULLER. If you question my authority, I will be glad to give you the names.

The CHAIRMAN. If you do not desire to answer the question you need not get into any controversy—

Mr. FULLER. Mr. Chairman, I will, for the sake of making the record right, submit here a copy of my credential and I will be glad to have Mr. Spelling examine this paper. It bears the signatures of the executive officers of the organizations I represent. As to representing the Administration, I say no, I represent no one except these men whom I am authorized to represent.

The credential referred to was submitted by Mr. Fuller, as follows:

[Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen.]

DECEMBER 1, 1905.

To whom these presents may concern, greeting:

This is to certify that the bearer hereof, Mr. H. R. Fuller, whose signature appears below, has been duly chosen to serve as the representative of the above-named organizations at Washington, D. C., during the first session of the Fifty-ninth Congress, in matters pertaining to national legislation.

W. S. STONE,
Grand Chief Engineer, B. of L. E.
JOHN J. HANNAHAN,
Grand Master, B. of L. F.
E. E. CLARK,
Grand Chief Conductor, O. of R. C.
O. H. MORRISSEY,
Grand Master, B. of R. T.

H. R. FULLER,
Representative.

Mr. SPELLING. What is the date of that?

Mr. FULLER. I am simply answering the statement made here with regard to President Roosevelt, in reference to the action he has taken in regard to this bill.

Mr. SPELLING. What is the date of your credential?

Mr. FULLER. December 1, 1905.

The CHAIRMAN. Go ahead with your argument.

Mr. FULLER. Recently a United States circuit judge in the eighth circuit, who was at one time told in a dissenting opinion by one of his associates that he had made human life cheaper than lumber in that circuit, rendered a decision on our safety-appliance law which practically nullified its most important provisions; and for the first time, so far as we have been able to learn, the United States Government intervened in a suit between private parties, and in order to save that

wholesome and beneficent law, President Roosevelt ordered the Attorney-General to appeal to the Supreme Court for a writ of certiorari, which was granted. The case was argued by the Government, and the honorable Judge Sanborn was reversed on every point. This action on the part of President Roosevelt meant much to the men I represent; and the statement that he is not a friend of labor does not represent their sentiments.

When I say Mr. Roosevelt has been a friend to labor, I do not mean to say that in being our friend he has been unfair to capital. I think it might better be stated that he has been fair to labor. While he has done these things, I do not think he has done anything more than a good, conscientious President would do; but it is so extraordinary, in view of our past experiences with other Presidents, that I believe we can be excused for calling him our friend.

Mr. ALEXANDER. May I interrupt you a moment?

Mr. FULLER. Certainly.

Mr. ALEXANDER. I have been obliged to divide my time between this committee and the Rivers and Harbors Committee for some week or more, so that I have not been able to be here and hear all that has been said. I apprehend that there is a difference between you and the people you represent and Mr. Spelling and the people that he represents.

Possibly you have already been over that, and have explained it, and it is in the record. If it is, that is sufficient; I can read it in the record. But if it is not in the record I wish you would make the statement now while Mr. Spelling is present, that we may have a careful statement before us.

Mr. FULLER. I would be very glad to.

Mr. SPELLING. If the statement does not suit me I will respond.

Mr. FULLER. Our position is this: For ten years or more the working class of people have stood up under this abuse of the power of injunction by Federal judges. We have tried repeatedly; there has been a continual agitation and petitioning to Congress for legislation to remedy that abuse or prevent it in the future.

Bills have passed one House or the other, but never both Houses. A bill passed the Senate and came to the House and it did not pass here; the Grosvenor bill passed the House and it went to the Senate and they would not pass it over there. The President made a recommendation favorable to legislation which would give the adverse party an opportunity to be heard. We thought this was a step in the right direction, and we could afford to urge the passage of such a bill, and we are doing so.

I do not believe in taking anything that is not on the right line, but with the hope of making a start in the right direction we agreed to accept such a proposition, and that is contained in the Gilbert bill. Now, in doing that we do not claim that it is a cure for the evil. We claim that it is only a step in the right direction. If the American Federation of Labor would confine their arguments against this bill to the fact that it does not go far enough, that it is not a full remedy for the evil, then I think there would be considerable merit in their arguments, because we do not think that it goes far enough, and if it is passed and is strictly adhered to by the courts the agitation for legislation to further prevent this abuse will necessarily go on, because this bill will not be a cure.

Now, then, when I appeared before the committee a few days ago I said that while we advocated this bill that the committee had several bills before it which sought to remedy this evil, and if it saw fit to pass any of the other bills—if in its judgment as legislators it thought best to do so—we would not object; that we would take any bill that it then had before it. That is our position to-day. I think I have made myself understood.

Mr. DAVENPORT. May I ask a question?

The CHAIRMAN. Do you care to be interrupted?

Mr. FULLER. Yes; I am perfectly willing.

Mr. DAVENPORT. Is it not true at the same time the President urged the passage of such a bill that you advocate he said that the kind of bills the American Federation of Labor was advocating was one that he was opposed to?

Mr. FULLER. I did not understand him to say that in his message. If I remember rightly, his message is not susceptible of that interpretation.

Mr. SPELLING. The gentleman here—

The CHAIRMAN. Mr. Fuller will proceed.

Mr. SPELLING. But, Mr. Chairman—

The CHAIRMAN. You will take your seat, Mr. Spelling. You will have to obey the rules of this committee, and do it at once.

Mr. SPELLING. I don't want to quarrel—

The CHAIRMAN. It doesn't make any difference, Mr. Fuller has the floor.

Mr. FULLER. I do not object to him interrupting me.

Mr. SPELLING. He said that he would let me ask him a question. Now, can I do it?

The CHAIRMAN. No; you can not do it now.

Mr. SPELLING. Very well.

The CHAIRMAN. The reason is that if we keep on with this discussion we will never get through.

Mr. SPELLING. I am not trying to quarrel with him; it is all friendly.

The CHAIRMAN. That may be, but we want to get through.

Mr. FULLER. Mr. Gompers took the position that there was no law which authorizes the issuing of injunctions in labor disputes. He says the Sherman antitrust law was never intended to apply to labor. I wish I could agree with him in this opinion, but I can not. I have read the debates in the Senate on that law, and it is very plain to me that it was intended by members of that body, at least, that it should apply to labor. As to whether the labor injunction is here by authority of law, I wish to quote a few words from an authority on this question. This writer, too, is a critic of the modern use of injunctions. I quote from Labor in its Relation to Law, by F. J. Stimson. On pages 122, 123, and 124, speaking of the interstate-commerce and Sherman antitrust laws, he says:

But in 1887 was passed the United States law regulating interstate commerce and in 1890 the United States law against trusts.

* * * * *

In the great business of railways, and also of stevedores, sailors, wharf laborers, and certain other classes of laborers who were employed in handling goods designed for shipment to another State, these statutes gave express power, and in fact directed

ob!

the United States, through its Attorney-General and district attorneys, to interfere actively by the strong arm of a court of chancery and restrain any men, or body of men, who interfered with this, as it were, property right.

* * * * *

Now, under the two laws I have mentioned there is no way of avoiding this except by passing new laws.

I cited to the committee a number of labor injunctions which had been issued under these acts. But even if there was not a line of legislation specifically authorizing these injunctions, the Supreme Court has passed upon one labor injunction—I refer to the Debs case—and it held that the injunction was valid even without the Sherman law. So, I say, in our minds the injunction is here by the highest legal authority in the land, and we might just as well view it from that standpoint now as at any other time.

In the substitute bill submitted to the committee by Attorney Spelling on behalf of the American Federation of Labor they now admit that injunctions can be issued in labor disputes. Section 1 of that bill as proposed contains this language:

That no restraining order or injunction shall be granted by any court of the United States, or a judge, or by the judges thereof, in any case * * * involving or growing out of a dispute concerning terms or conditions of employment, except upon at least five days' personal notice to the person or persons against whom such restraining order or injunction is applied for * * *.

It is true that since that bill was introduced they propose to amend it by striking out all reference to notice, but I want to call your attention to the fact that the reasons given for suggesting that amendment by Mr. Spelling were not because they thought it would make the court the arbitrator, but because they thought that the courts ought to have the power to say whether or not notice should be granted.

Section 2 of that bill reads:

In cases arising in the courts of the United States or coming before said courts or before any judge or the judges thereof no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption, or creation, or termination of any relation between employer and employee, or concerning any act or thing to be done, or not to be done, with reference to, or involving or growing out of a labor dispute, shall constitute a conspiracy or other criminal offense, or be punished or prosecuted as such, nor shall the carrying out of any such agreement be restrained or enjoined *unless* the act or thing to be done or not to be done, would be unlawful if done by a single individual; nor shall the carrying out of any such agreement be restrained or enjoined unless such act or thing when done would be of the character described in the first section of this act.

The CHAIRMAN. Mr. Spelling has changed that; you have not got the bill that he finally drew, have you?

Mr. FULLER. I did not understand that there was any change in the second section.

The CHAIRMAN. Yes.

Mr. FULLER. The word "unless" is still in there.

The CHAIRMAN. You are familiar with the fact that Mr. Spelling did draw another bill?

Mr. SPELLING. I have it here and if the chairman will allow me I will give it to Mr. Fuller.

Mr. FULLER. The new bill is 18446. The second section reads "*unless* the act or thing to be done or not to be done would be unlawful if done by a single individual."

Is this not a recognition of the labor injunction?

I do not mention this in the way of criticism of their bill, but I

mention it in defense of our position, and to point out the inconsistency of the representatives of the American Federation of Labor in regard to this matter, and to show that they are now advocating the very proposition which they criticised us for advocating.

I listened with much interest to the arguments advanced by our opponents, and it seems to me that to those who believe in keeping the injunction within its proper sphere there could be no better argument for the passage of this legislation than some of the statements made by our friends on the other side. Their tales of violence should not be permitted to mislead the members of the committee from the real subject at issue. The question of violence is not before this committee, for not one of the gentlemen who appeared against this legislation could or would say that any of the bills under consideration would legalize violence. I do not think any lawyer who values his reputation would for one moment contend they would. The organizations I represent are just as much opposed to violence as these gentlemen. Neither do these gentlemen enjoy the monopoly of law and order they would have you believe. Workingmen have committed violence, and they have rightfully been made to answer for it; but in this they have not been alone. Their capitalistic brothers have encouraged them in it, and have also resorted to it themselves. I cited instances of this kind in my statement to the committee in the last Congress, and I do not think it necessary to now repeat them.

When asked the plain question they disclaim any property right in the employee, but in their statements they unconsciously claim that right. What could be more conclusive that they claim this right than the statement of Mr. Mahoney, that if you could protect a man's dog and horse by an injunction why should you not also so protect his employees? Is this not a claim of property right in the employee? The only reason for protecting a man's dog or horse by injunction is because of the property he has in that dog or horse.

The CHAIRMAN. Not the property he has in his employee, but a property right by virtue of the contractual right.

Mr. FULLER. Well, we are not willing to concede that the contract of labor, the personal service of a laborer, can be exacted as such by the employer.

Mr. GILLET. He would have his action for damages?

Mr. FULLER. That is all.

The CHAIRMAN. That shows it is a property right, then?

Mr. FULLER. It is not a property right in the employee, and he has no property right in his labor. I think if there was ever any doubt about that it was settled by the thirteenth amendment.

That gentleman also admitted that an injunction should be issued to prevent one man from killing another. Would this not make the court the accuser, judge, jury, and executioner? This is what they want the court to be, and that is why they want the injunction, rather than indictment and trial by jury.

Mr. Monahan's argument was that injunctions had lessened the number of strikes, and that the passage of this legislation would increase their number. We have claimed all along that that was the purpose of the injunction, and here we have an open admission of it. Try as they will, they can not prevent the truth from coming out. The only weapon the wage-worker has is his right to strike. The testimony of the opposition shows that he has been deprived of that

right by injunction, and I ask a fair question. Is it not time for Congress to act? That same gentleman indicts the juries and trial justices because, as he says, some of them are members of labor organizations.

But how about some of the judges who are appointed and controlled by corporation influence. For centuries the predecessors of the present captains of industry were opposed to trial by jury, and it is no wonder that these gentlemen now condemn it.

Much was said here about the boycott, and extracts from the report of the Anthracite Coal Strike Commission were read to support their arguments, and the very article from which they read contained in its headlines the word "Blacklist," but they took good care not to read what was said of the blacklist. After speaking of the boycott the Commission says:

Closely allied to the boycott is the blacklist, by which employers of labor sometimes prevent the employment by others of men whom they have discharged. In other words, it is a combination among employers not to employ workmen discharged by any of the members of said combination. This system is as reprehensible and as cruel as the boycott, and should be frowned down by all humane men.

But the Federal courts enjoin the boycott and will not enjoin the blacklist. I submitted to the committee in the last Congress a copy of the opinion of Federal Judge Rodgers, in which he refused to enjoin a blacklist. It appears on page 503 of the printed hearings.

The gentleman who spoke of the Northern Pacific injunction seemed to excuse it on account of the road being in the hands of a receiver. Where is the law or principle that justifies a judge in depriving the employees of a receiver of their liberties any more than other employees? The receivership rule seems to work both ways against the employee.

Some few years ago the Philadelphia and Reading Railroad was in the hands of a receiver, and that receiver decided to discharge every man in its employ who was a member of the Brotherhood of Railroad Trainmen unless he withdrew from that organization. The men carried an insurance in this organization, a life insurance, which I think was along about a thousand dollars about that time, and sick benefits and other protection, and they had seen the injunction used against them, and they thought they would try it. They went to the United States circuit judge, Judge Dallas, of Pennsylvania, and asked him to enjoin that receiver from doing that.

But the court said, among other things, "There is no law that prohibits this, so we will not enjoin them from doing it." Now, these people on the other side come in and say that the injunction is supposed to be used where there is no adequate remedy, where there is no law; yet Judge Dallas said he would not enjoin the receiver because there was no law forbidding him from discharging those men.

Mr. PALMER. Judge Dallas is a good Democrat, you know, don't you?

Mr. FULLER. I do not think so.

Mr. PALMER. You do not?

Mr. FULLER. No, sir; I do not think he is a good Democrat.

In their efforts to get the committee off the right track they started the cry of socialism, but the man who made it had to admit that the men who are asking for this legislation were not followers of that creed. If they were true observers and would admit the truth, they would say that the trades unions are to-day the thing that is saving

them from socialism. If they have such horrors of socialism, it seems to me that the logical thing for them to do is to submit to some legislation, for, in my mind, their very attitude and the failure of Congress to pass remedial legislation is making more socialists than any other influence.

They say that if the Gilbert bill were a law and they were required to give notice they could not get service. How about the sage of Cleveland, who sat behind his searchlights in his New Jersey barricade and bade defiance to all subpoenas?

Next, it is said if Congress passes this legislation it will be considered an attack on the judiciary. I do not think the members of this committee are frail enough to allow such argument to frighten them from their duty. This is a legislative function we are asking you to exercise, and it is not only the right but the duty of Congress to exercise its powers when it becomes necessary to do so, and in this case we think it is necessary. Mr. Chairman, there is only one way this matter can be remedied, and that is by legislation. The courts will not remedy it themselves. The Executive has exercised his authority in the matter. He has used his power of pardon, and has recommended this legislation, and we hope Congress will do its duty. The courts are not backward in exercising their power. Let Congress pass a law which they think is not right, and how quick do they declare it unconstitutional. And has it been forgotten when in the impeachment proceedings of Judge Swayne another judge sought to instruct Members of Congress that it was wrong for the House to take such action?

Mr. Chairman, since the question of parties has been mentioned, I want to read from a speech delivered by the chairman of the Republican circuit court convention in 1900 in the very State in which the speech was made from which Mr. Davenport quoted to-day.

The CHAIRMAN. What was this; a circuit court convention?

Mr. FULLER. A circuit court convention of this same political party held in Steubenville, Ohio.

The CHAIRMAN. They were going to nominate—

Mr. FULLER. They were going to nominate a judge for that circuit. Here is what the chairman of that convention said:

I can not refrain upon this occasion from calling to your attention a revolutionary tendency upon the part of the American courts which I fear is fraught with more or less of danger to the dearest interests of the people. I allude to the tendency, so clear and manifest in some of the States, on the part of the judiciary to encroach upon the proper and constitutional functions of the jury.

This tendency is most marked in the State of Pennsylvania, and in certain other States where the courts exercise almost absolute control over the action of juries, and where by a system of legal fiction the judges have encroached upon the province of the jury by directing verdicts and by gravely deciding that certain questions of fact are not questions of fact at all but questions of law. This has progressed to such an extent in our sister State that I doubt if in the last twenty years a jury has sat and has really determined the issues between the parties in certain classes of cases, but they have rather sat and deliberated and considered, not what they ought to find and determine, but what the court will permit them to find and determine. So high-handed has been the usurpation of power on the part of the courts of that State in a certain class of cases that a law writer of distinction in his book has cautioned the student not to be misled and give too great weight to the decisions of the supreme court of Pennsylvania in negligence cases, using this language, "For it must be conceded that a great railroad company in this State controls the decisions of this court with the same regularity and precision with which it controls its trains upon its tracks."

Mr. PALMER. That fellow was entirely mistaken in every way.

Mr. FULLER. I will tell you who he is, and—

Mr. PALMER. I do not care who he is; that is not so.

Mr. FULLER. I will say this in defense of the man who made that speech. I am a citizen of the State of Pennsylvania, and I believe that the Pennsylvania Railroad has controlled the courts and legislature of that State for more than a quarter of a century. In the last campaign, however, the good people of all parties got together and made a move toward redeeming our State. In my very home county we had a machine as corrupt as ever ruled a people, and it was headed by the judge of the court, who was ably assisted by the attorney of the Pennsylvania Railroad Company.

Mr. PALMER. What county do you live in?

Mr. FULLER. I live in Beaver County, and last fall the good people of that county got together, and we put in a judge that the lawyers in that county are not afraid to take any kind of a case before. He is not hampered by any railroad, and the influence of the very railroad which has been alluded to here was used to defeat him.

He further says:

Thus, in that great Commonwealth, by directing verdicts the independence of the jury is destroyed. The provision of the Constitution guaranteeing trial by jury is nullified. I take it to be self-evident that that constitutional right stands upon so high and incontestable a ground that it ought not to be encroached upon by judges and courts.

* * * * *

In view of the fact that such revolutionary legal heresy is entertained by a judge now upon the bench in Ohio, it becomes important that we, in making nominations for these high offices, should strive to choose men who will not seek to be both judge and jury.

This speech was made by the Hon. James Kennedy, a Member of the House of Representatives from the Eighteenth Ohio district.

I do not believe any man who knows the inside workings in the State of Pennsylvania, will, if he is compelled to speak his mind, deny the influence of that corporation. The legislation and court decisions of the State speak for themselves. I am told by law students and others that in the schools and colleges the decisions of the State courts of Pennsylvania are not cited as guides for the student. This notwithstanding the statement of my friend, Mr. Davenport, yesterday, when he quoted a decision, as he said, from the great supreme court of Pennsylvania.

Mr. ALEXANDER. What is that text book?

Mr. FULLER. That is not given here, but I understand it is from one of Rorer's works.

Mr. PALMER. I practiced law in Pennsylvania for fifty years, and I know that is not true.

Mr. FULLER. Well, I suppose we can differ honestly about it. I think it is true.

Mr. PALMER. Well?

Chief Justice McCabe, of the supreme court of Indiana, in writing on the subject of injunctions in the Chicago Times-Herald of September 19, 1897, said;

* * * Yes; I am inclined to believe that the use of the power interferes with the constitutional right of trial by jury, and in so far as it does this it endangers the highest and most sacred safeguard of the people. * * *

Judge John Gibbons, of the circuit court of Illinois, in the same paper said.

* * * I desire to say that in my opinion there is a danger to-day threatening the very existence of the Republic as gigantic as that which precipitated the rebellion and well-nigh wrought the ruin of our Union. Now it comes, as ever, in the seductive guise of the law and under the solemn authority of the court. * * * In their efforts to regulate or restrain strikes by injunction they are sowing dragons' teeth and blazing the path of revolution. * * *

Judge M. F. Tuley, of the appellate court of Illinois, in the same paper gave expression to these words:

* * * Such use of the right of injunction by the courts is judicial tyranny, which endangers not only the right of trial by jury, but all the rights and liberties of the citizens. * * * If Congress has the power it should promptly put an end to "government by injunction" by defining and limiting the power of the Federal courts in the use of the writ. * * *

During the coal miners' strike in 1897, on the question of injunctions, Governor Sadler, of Nevada, expressed himself as follows:

* * * The tendency at present is to have committees make the laws, and to have the courts enforce them by injunction, both of which methods, in my opinion, are subversive of good government and the liberties of the people. * * * (Railroad Trainmen's Journal for September, 1897, p. 833.)

On the same question Governor Jones, of Arkansas, said:

* * * Freedom of speech and of the press is inviolable in this Government, and we should not tolerate for a moment any encroachment upon this sacred right. Judge Jackson's order is revolutionary, and if upheld by the Federal Supreme Court and submitted to by the people will overturn our system of government and destroy our liberties. It is not only illegal and unadvisable, but is such an act as calls for his impeachment and removal from his office. (Railroad Trainmen's Journal for September, 1897, p. 833.)

Governor Pingree, of Michigan, expressed himself in these words:

* * * I consider government by injunction, unless stopped, the beginning of the end of liberty. Tyranny on the bench is as objectionable as tyranny on the throne. It is even more dangerous, because judges claim immunity from criticism, and foolish people acquiesce in their claims. To enjoin people from assembling peaceably to discuss their wrongs is a violation of first principles. * * * (Railroad Trainmen's Journal for September, 1897, p. 832.)

During October, 1897, Hon. W. H. Moody, who is now Attorney-General, in speaking to a large meeting of the most influential Republicans of Massachusetts, was applauded when he said:

I believe in recent years the courts of the United States, as well as the courts of our own Commonwealth, have gone to the very verge of danger in applying the process of the writ of injunction in disputes between labor and capital; and I do not propose to let the Democrats say that alone. But I want you to consider for a moment what already has been done. * * * You all around me who will be members of the general court of Massachusetts will deal with that subject as you please. It is a mere legislative detail. We in Congress must deal with it so far as it affects the courts of the United States.

This question of injunction will be dealt with in the Congress of the United States, and the question of injunction can be dealt with in the legislature of the Commonwealth of Massachusetts.

In his annual address as president of the American Bar Association, in August, 1894, Thomas M. Cooley said:

Courts with their injunctions, if they heed the fundamental law of the land, can no more hold men to involuntary servitude for even a single hour than can overseers with the whip.

and admonished the profession that attention—

be given to the question whether discretionary punishment of strikers for contempt, when the acts punished were but trespassers upon the possession of a receiver, is not being pushed to an extreme that is a little startling. (Reports American Bar Association, vol. 17, pp. 15-51, 240, 243.)

In an address before the Grafton and Coos Bar Association, January 28, 1898, on the question of government by injunction, Mr. J. H. Benton, jr., a prominent attorney of Boston, said:

The courts have gone too far. It is impossible for them to go on in the course they have taken and retain the confidence of the people or preserve their own powers. * * *

It is idle to say that the popular complaint on this subject means nothing, or that, as one judge has said, "Nobody objects to government by injunction except those who object to any government at all."

It does mean much. It means that the courts have, in the judgment of many of the most intelligent and thoughtful citizens, and of Congress, exceeded their just powers; that they have by the so-called exercise of the equity power practically assumed to create and to punish offenses upon trial by themselves without a jury, and with penalties imposed at their discretion. And this means that if the courts continue in this course their power to enforce their orders by proceedings for contempt will be limited by legislation. The people will not, and they ought not to, submit to decisions like those in the Northern Pacific and Ann Arbor cases. (Government by Injunction, by J. H. Benton, jr., pp. 97, 107.)

But this is not the first time the eyes of the country have been turned upon the courts. I want to put into the record some of the writings of Thomas Jefferson upon this subject.

In a letter to Mr. M. M. Coray, under date of October 21, 1823, Mr. Jefferson said:

At the establishment of our Constitution the judiciary bodies were supposed to be the most helpless and harmless members of the Government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a free hold and irresponsibility in office; that their decisions, seeming to concern individual suitors, only passed silent and unheeded by the public at large; that these decisions, nevertheless, become law by precedent, sapping by little and little the foundations of the Constitution and working its change by construction before any has perceived that that invisible and helpless worm had been visibly employed in consuming its substance.

In a letter to Judge Roane, under date of September 6, 1819, Mr. Jefferson said:

"The nation declared its will by dismissing functionaries of one principle and electing those of another in the two branches, executive and legislative, submitted to their election. Over the judiciary department the Constitution had deprived them of their control. That, therefore, has continued the reprobated system, and although new matter has occasionally been incorporated into the old, yet the leaven of the old mass seems to assimilate to itself the new, and after twenty years' confirmation of the federated system by the voice of the nation, declared through the medium of elections, we find the judiciary on every occasion still driving us into consolidation. * * * For, intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scarecrow; that such opinions as the one you combat, sent cautiously out, as you observe, also by detachment, not belonging to the case often, but sought for out of it, as if to rally the public opinion beforehand to their view, and to indicate the line they are to walk in, have been so quietly passed over as never to have excited an animadversion even in a speech of any one of the body intrusted with impeachment. The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent is absolute also—in theory only at first, while the spirit of the people is up, but in practice as fast as that relaxes.

Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law. My construction of the Constitution is very different from that you quote. It is that each department is truly independent of the others and has an equal right to decide for itself. What is the meaning of the Constitution in the cases submitted to its action, and especially where it is to act ultimately and without appeal? * * * These are examples of my position: That each of the three departments has equally the right to decide for itself what is its duty under the Constitution, without any regard to what the others may have decided for themselves under a similar question."

In a letter to Thomas Ritchie, under date of December 25, 1820, Mr. Jefferson said:

"But it is not from this branch of government we have most to fear. Taxes and short elections will keep them right.

"The judiciary of the United States is the subtle corps of sappers and miners constantly working underground to undermine the foundations of our constitutional fabric. They are construing our Constitution from a coordination of a general and special government to a general and supreme one alone. This will lay all things at their feet, and they are too well versed in English law to forget the maxim, '*Boni iudicis est ampliari jurisdictionem.*' We shall see if they are bold enough to take the daring strides these five lawyers (judges) have lately taken. Having found from experience that impeachment is an impracticable thing, a mere scarecrow, they consider themselves secure for life; they skulk for responsibility to public opinion, the only remaining hold upon them, under a practice first introduced into England by Lord Mansfield. An opinion is huddled up in conclave (perhaps by a majority of one), delivered as if unanimous, and with the silent acquiescence of lazy or timid associates by a crafty chief judge (Marshall), who sophisticates the law to his mind by the turn of his own reasoning. A judiciary law was once reported by the Attorney-General to Congress requiring each judge to deliver his opinion *seriatim* and openly, and then to give it in writing to the clerk to be entered on the record. A judiciary independent of a king or executive alone is a good thing, but independence of the will of the nation is a solecism, at least in a republican government."

In a letter to Archibald Thweat, under date of January 19, 1821, Mr. Jefferson further said:

I am sensible of the inroads daily making by the Federal into the jurisdiction of its coordinate associates, the State governments. The legislative and executive branches may sometime err, but elections and dependents will bring them to rights. The judiciary branch is the instrument which, working like gravity, without intermission, is to press us at last into one consolidated mass. Against this I know no one who, equally with Judge Roane himself, possesses the power and the courage to make resistance, and to him I look and have long looked as our strongest bulwark. If Congress fails to shield the States from danger so palpable and so imminent, the States must shield themselves, and meet the invader foot to foot.

In a letter to Mr. C. Hammond, under date of August 18, 1821, Mr. Jefferson declared:

"It has long, however, been my opinion, and I have never shrunk from its expression, that the germ of dissolution of our Federal Government is in the constitution of the Federal judiciary, an irresponsible body, working like gravity by night and by day, gaining a little to-day and a little to-morrow, and advancing its noiseless steps like a thief over the field of jurisdiction, until all shall be usurped from the States and the government of all be consolidated into one. To this I am opposed, because when all governments, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the check provided of one government on another, and will become as venal and oppressive as the Government from which we separated. It will be as in Europe, where every man must either be pike or gudgeon, hammer or anvil. Our functionaries and theirs are wares from the same workshop, made of the same material and by the same hand. If the States look with apathy on this silent descent of their Government into the gulf which is to swallow all, we have only to weep over the human character formed uncontrollable but by a rod of iron, and the blasphemers of man as incapable of self-government become his true historians."

In a letter to Colonel Nicholas, under date of December 11, 1821, Mr. Jefferson said:

"I fear, dear sir, we are now in such another crisis, with this difference only, that the judiciary branch is alone and single handed in the present assaults on the Constitution. But its assaults are more sure and deadly as from an agent seemingly

passive and unassuming. May you and your contemporaries meet them with the same determination and effect that your father and his did the alien and seditious laws, and preserve inviolate a Constitution which, cherished in all its chastity and purity, will prove in the end a blessing to all the nations of the earth."

In a letter to William T. Barry, under date of July 2, 1822, Mr. Jefferson said: "We already see the power installed for life, responsible to no authority, advancing with a noiseless and steady pace to the great object of consolidation. The foundations are already deeply laid by their decisions for the annihilation of constitutional States' rights and the removal of every check, every counterpoise, to the engulfing power of which themselves are to make a sovereign part. If ever this vast country is brought under a single government, it will be one of the most extensive corruptions, indifferent and incapable of a wholesome care over so wide a spread of surface. This will not be borne, and you will have to choose between reformation and revolution. If I know the spirit of this country, the one or the other is inevitable. Before the canker is become inveterate, before its venom has reached so much of the body politic as to get beyond control, remedy should be applied. Let the future appointment of judges be for four or six years, and renewable by the President and Senate. This will bring their conduct at regular periods under revision and probation, and may keep them in equipoise between the general and special government. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the King. But we have omitted to copy their caution, also, which makes a judge removable on the address of both legislative houses. That there should be public functionaries independent of the nation, whatever be their demerit, is a solecism in a republic of the first order of absurdity and inconsistency."

In a letter to Judge Johnson, under the date of March 4, 1823, Mr. Jefferson said: "I can not lay down my pen without recurring to one of the subjects of my former letter, for in truth there is no danger I apprehend so much as the consolidation of our Government by the noiseless and therefore unalarming instrumentality of the Supreme Court. * * * For in truth there is at this time more hostility to the Federal judiciary than any other organ of the Government."

In a letter to Edward Livingston, under date of March 25, 1825, Mr. Jefferson wrote:

"Time and changes in the condition and constitution of society may require occasional and corresponding modifications. One single object, if your provision attains it, will entitle you to the endless gratitude of society, that of restraining judges from usurping legislation. And with no body of men is this restraint more wanting than with the judges of what is commonly called our General Government, but what I call our foreign department. They are practicing on the Constitution by inferences, analogies, and sophisms as they would an ordinary law. They do not seem aware that it is not even a Constitution formed by a single authority, and subject to a single superintendence and control, but that it is a compact of many independent powers every single one of which claims an equal right to understand it and to require its observance. However strong the cord of compact may be, there is a point of tension at which it will break. A few such doctrinal decisions as barefaced as that of the Cohens happening to bear immediately on two or three of the large States may induce them to join in arresting the march of Government and in arousing the co-States to pay some attention to what is passing to bring back the compact to its original principles or to modify it legitimately by the expressed consent of the parties themselves, and not by the usurpation of their created agents. They imagine they can lead us into a consolidate government, while their road leads directly to dissolution. This member of the Government was at first considered as the most harmless and helpless of all its organs, but it has proved that the power of declaring what the law is ad libitum by sapping and mining slyly and without alarm the foundations of the Constitution can do what open force would not dare to attempt."

These opinions and warnings of Jefferson are very pertinent at this time. The pity is that all have not paid heed to them for the past half a century. Now, let us see what another great expounder of the Constitution has said. In a speech at Fort Hill, July 26, 1831, Mr. Calhoun said:

"No one has been so hardy as to assert that Congress or the President ought to have the right or to deny that if vested finally and exclusively in either, the consequences which I have stated would not necessarily follow; but its advocates have been reconciled to the doctrine on the supposition that there is one department of the General Government which, from its peculiar organization, affords an independent tribunal through which the Government may exercise the high authority which is the subject of consideration with perfect safety to all. I yield, I trust, to few in my attachment to the judiciary department. I am fully sensible of its impor-

tance and would maintain it to the fullest extent in its constitutional powers and independence, but it is impossible for me to believe that it was ever intended by the Constitution that it should exercise the power in question, or that it is competent to do so, and if it were it would be a safe depository of the power. Its powers are judicial and not political, and are expressly confined by the Constitution to all cases in law and equity arising under this Constitution, the laws of the United States, and the treaties made or which shall be made under its authority, and which I have high authority in asserting excludes political questions and comprehends those only where there are parties amenable to the process of the court."

Next I will put on the witness stand no less a person than Andrew Jackson. Let us hear his view of the province and powers of the Federal judiciary while he was President.

In his veto of the bill extending the old United States Bank President Jackson said:

"The Supreme Court ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges; and on that point the President is independent of both. The authority of the Supreme Court must not therefore be permitted to control the Congress or the Executive, when acting in their respective capacities, but to have only such influence as the force of their reasoning may deserve."

And let me here call attention to a case which is of no little interest. Gen. Andrew Jackson was fined \$1,000 by Judge Hall in the United States circuit court at New Orleans in March, 1815. General Jackson had refused to recognize a writ of habeas corpus issued out of Judge Hall's court while New Orleans was under martial law. In addition to refusing to respect the writ, General Jackson placed Judge Hall under military arrest for having issued the writ. The day after Judge Hall's release he summoned General Jackson to appear in court and fined him \$1,000. The fine was refunded to Jackson by act of Congress in 1844 with interest. The proceedings were *prima facie* so summary that the case is not reported.

In the last Congress we presented to this committee a large number of injunctions, and they took up a considerable part of the room of this document, which contains 674 pages, printed in the last Congress. I did not think it was either proper or necessary to again unload them on the committee, and so in my statement I did not present any; but now we are criticised by the other side, because we do not show anything at this particular hearing in behalf of this legislation.

Now, if this committee wants to and they will permit me I can fish out of this volume enough to make up a good record in this Congress to give good reasons why we should have legislation on this subject. I only do this in defense of our position, in view of what has been said by the other side.

They said we only presented one case. On page 521 of those hearings I find this in an injunction. This was the Jenkins injunction in the Northern Pacific case, in which the men were restrained, practically, from leaving the service of the company. It contained this provision:

And from ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time.

It also contained this language:

And from so quitting the service of the said receivers with or without notice as to cripple the property or prevent or hinder the operations of the railroad.

The latter provision, which I have just read, was stricken out by the circuit court of appeals on appeal. The House of Representatives sent the judiciary committee to Milwaukee to investigate that injunction, and here is a part of their report:

Your committee therefore recommends the adoption of the following resolutions:

Resolved, That the action of Judge Jenkins in issuing said order December 18, 1893, being an order and writ of injunction, at the instance of the receivers of the Northern Pacific Railroad Company, directed against the employees of said railroad company and in effect forbidding the employees of said Northern Pacific Railroad Company from quitting its service under the limitations therein stated, and in issuing a similar order of December 22, 1893, in effect forbidding the officers of the labor organizations with which said employees were affiliated from exercising the lawful functions of their office and position, was an oppressive exercise of the powers of the court, an abuse of judicial power, and a wrongful restraint upon said employees and the officers of said labor organizations; that said orders have no sanction in legal procedure, were an invasion of the rights of American citizens, and contrary to the genius and freedom of American institutions, and therefore deserve the condemnation of the representatives of the American people. (House Report 1049, Fifty-third Congress, second session.)

There were no labor leaders upon that committee. There was a committee representing the House of Representatives and the whole people.

Mr. Chairman, the records, if they could be found, the testimony in that case, shows that when this prayer for that extraordinary injunction was sent to Judge Jenkins these objectionable provisions which I have read were especially called to his attention and he was told, I believe, by the railroad attorneys that there was no precedent for them, and notwithstanding this he signed and issued it.

And we appealed to him to strike out that provision which prevented the men from leaving the service in a manner that would cripple or hinder the operation of the railroad, and he refused to do it.

The Judiciary Committee of the House thought it was an extraordinary thing, and they say in their report that a proper construction of it would restrain those men from quitting the service, and I make the statement that in my opinion if those men had gone ahead and violated that injunction, if they had struck in the face of it, they would have been put behind the prison bars by Judge Jenkins.

In addition to that, in the Fifty-fourth Congress the Senate instructed the Judiciary Committee to investigate the whole question of contempts, and if they found that the citizens of the country needed any further protection from the courts in those cases to report by bill, and that committee reported a bill providing for jury trials in indirect contempts, and it passed the Senate without division.

Those who have appeared here seem to justify this injunction in the Northern Pacific case on the grounds that the road was in the hands of a receiver. I fail to see any right or justice in any law or any principle which denies the employees of a receiver from exercising their rights as American citizens any more than other employees, and evidently the circuit court of appeals and the Judiciary Committee of the House of Representatives took that same position.

It was suggested here by one member of the committee, Mr. Littlefield, apparently as an excuse for the present condition, Why don't you appeal some of these objectionable injunctions to the higher courts

and get a ruling on them, and if they are wrong a rule will be laid down for these courts to follow? We see what the circuit court of appeals did in the Northern Pacific case, and it was only a short time ago when Judge Adams in St. Louis, a Federal judge, issued an injunction which had practically the same effect as the Northern Pacific injunction. I want to read from this Adams injunction:

Absolutely to desist and refrain from in any way or manner ordering, persuading, inducing, or otherwise causing, directly or indirectly, the employees of the Wabash Railroad Company, complainant, engaged in or about the operation of its trains within the United States, as brakemen, switchmen, or locomotive firemen, to strike or quit the service of said company.

Mr. PARKER. Is that all of the sentence?

Mr. FULLER. No; there is a lot more.

Mr. PARKER. I mean that one sentence.

Mr. FULLER. No; that is not all.

Mr. PARKER. Let us hear the rest of the sentence.

Mr. FULLER. Do you wish me to continue?

Mr. PARKER. To the end of that sentence.

Mr. FULLER (continuing):

And from in any way molesting or interfering with said company's said employees or with the operation of its trains or conduct of its business as a common carrier, and from molesting or interfering with said railroad company, its officers, agents, or employees, in respect to the operation of its trains or the employment of men for or in connection therewith, or from preventing or interfering with said company in carrying out its contracts of employment with its employees, and its contracts with shippers for the transportation of property, and from interfering with or preventing said railroad company from affording reasonable, proper, and equal facilities for the interchange of traffic between its lines of railroad and other lines of railroad connecting therewith.

I think it is nearly all in one sentence.

Mr. PARKER. There was no statement of anything qualifying that?

Mr. FULLER. No, sir; that was not qualified, but I want to say a word in connection with that. I am glad that feature was mentioned. The prayer upon which that injunction was issued was that the purpose of these men in ordering or advising a strike was to tie up the United States mails and interstate commerce.

Mr. PARKER. What page were you reading from?

Mr. FULLER. Page 551. It begins on page 550. Now, the injunction would not have been so objectionable—but it would not have been right, however—if the court had confined it to the purpose the prayer stated the strike was to be for, but it did not; it made it absolute; it was not qualified. But I say that any judge, with intelligence enough to be elevated to a United States court, I care not what the prayer may be, when he is asked to enjoin men from doing things that he knows they have a lawful right to do, such as striking, should know it is wrong, and all the legal quibbling that can be presented to excuse it can not justify it in the eyes of the men who suffer from it.

Mr. ALEXANDER. In this case was not an appeal taken?

Mr. FULLER. We made this same judge take all this back.

Mr. DAVENPORT. That is, he refused to do it?

Mr. PARKER. Judge Adams was compelled to dissolve the injunction?

Mr. FULLER. Yes; but I want to tell you another little thing in connection with this injunction which does not appear in the record and which does not reflect very creditably upon this judge. This

injunction as first issued was not returnable at all. The next day after the injunction had been issued we sent to the clerk's office for a copy of it. He said there was only one copy and the judge had that.

Now, the judge the next day, when this was called to his attention, when he saw that there was going to be a fight made on his order, issued a supplemental statement and dated it the day he issued the injunction, giving us a right to go into court and ask its dissolution; but it was a fact that it was issued the next day.

Mr. PARKER. It reads here as if the injunction had not been issued, but an order made for the injunction. Was the injunction issued?

Mr. FULLER. That was a part of the injunction I read.

Mr. PARKER. This was an order.

Mr. GILLETT. Was that injunction served?

Mr. FULLER. It seems as though it was not served the day before. There was only one copy of it.

Mr. GILLETT. And it was only the supplemental order that he corrected that was served?

Mr. FULLER. It was the additional of the supplemental order, that was the correction, but it was not issued the day of the injunction, although it bears the same date as the injunction.

Mr. GILLETT. It was the supplemental order that was served?

Mr. FULLER. Well, now, I can not just say as to that. Yes, you will notice below there he says: "Here is a supplemental order"—

It is ordered that the injunctive order heretofore this day made herein be, and the same is, so far modified as to permit the defendants or either of them, within fifteen days from this date to move to set aside the same, etc.

We submit this injunction in an answer to the statement made here that if we would appeal these bad cases to the higher courts and get a decision that would remedy it. It would not remedy it, and I say to you that nothing will remedy it in the hands of a judge who wants to use the judicial power of his court, as some of them have done, to help the employer, except forbidding him by law to do such a thing.

Mr. ALEXANDER. You got the redress in this case by simply going after the judge and calling his attention to it sharply, and then he revised the original injunction?

Mr. FULLER. Yes; but here is the position: The Wabash Company knew when they asked for that injunction that if we contested it we could prevent the permanent injunction, because their prayer was full of falsehoods from one end to the other. They did not expect to make it stick permanently, but they knew that it would take us probably a month to get it dissolved, and they wanted that month to prepare for a strike, and that is the reason the injunction was asked for.

Mr. ALEXANDER. Was there anything wrong in it as finally revised?

Mr. FULLER. No; he simply refused to make it permanent.

Mr. PALMER. Can you not move to set aside an injunction, and could you not have done it if the supplemental order had not been made?

Mr. FULLER. I could not say positively as to that.

Mr. PALMER. You could have done that.

Mr. FULLER. That is a technical thing to me, and it might be a proper question for a lawyer to answer.

Mr. PALMER. It is not technical at all. Anybody can go into court any time and ask to have such an order set aside; it need not be returnable at any time—you could go in the next day.

Mr. FULLER. It seemed to be necessary enough for the judge to issue the supplemental order giving us that right and falsify that order, too, by dating it a day ahead.

Mr. PALMER. That is all right; but there is nothing in the point that you could not ask to have it set aside, because there was no time specified.

Mr. FULLER. I do not know that I said that; but if we could have went into court without the supplemental order, why did he say in that supplemental order that the injunctive order was so far modified as to permit us to move to set it aside?

Mr. PALMER. You said they wanted it held up for a month—that you could not get it set aside for a month?

Mr. FULLER. I said it would take a month to get it set aside, yes; but I did not say it would take that long to go into court.

Mr. PALMER. It would not take any longer if there was anything wrong in the statement than if there was something wrong in the order.

Mr. FULLER. I was not basing the time it would take to get it dissolved on the supplemental order; I was basing it principally on the fact that it took nearly a month after we did get into court, and the company had all that time to prepare.

The Wabash Railroad knew that if we had an opportunity to go into court on a temporary order that we could prove their statements false, just as we did on the permanent order, and they asked the judicial branch of the Government to hold us up for a while and it did as they requested.

Mr. GILLETT. What you are contending for largely is that you are entitled to have notice before those orders were issued?

Mr. FULLER. Yes, sir. The injunction was issued *ex parte*; but when we got our day in court it was dissolved.

Mr. GILLETT. I see.

Mr. FULLER. Those employees were kept under that restraint of personal liberty for about a month.

Mr. ALEXANDER. What is that?

Mr. FULLER. It took us about a month.

Mr. ALEXANDER. I understood you to say a moment ago that the next day it was modified.

Mr. FULLER. No, sir; he issued a supplemental order the next day giving us the right to come into court.

Mr. PALMER. You did not have to have that; you could go into court just as well without it.

Mr. FULLER. I mentioned that part of it to show the actions of the judge who issued that injunction, to issue a decree and put the wrong date on it. There must have been something important in it or he would not have resorted to that, and I have just as much friendship and respect for the judiciary as any man, and so have the men I represent.

It means a great deal when men are organized for a strike and the psychological moment comes for action, for the judge to use the strong arm of the court to come down and say, "Don't strike now; we will hold you up for awhile," and that is what this judge did. The conditions in that Wabash case were: There had been several attempts west of the Missouri River on the part of the conductors, trainmen, and firemen to increase their wages. There was a standard stipulation per

mile for those classes of service. A committee of one road would go in to their general manager and ask for an increase. Some of these managers recognized the justice of it, but said, "Here are our competitors, we can not pay more than they," and the men were encouraged by some fair-minded general managers to make a demand all over that territory, and that was their only hope and they did so.

They picked out one road, the Missouri Pacific, to start on. They went to St. Louis and made the demand. The general manager of that road did not like his road being picked out as the first. But they said "This is a general movement and we have decided to start on you." That general manager granted an increase with the tacit understanding between the executive officers of our organizations, those officers being there directing the movement of that affair, that they would not settle with any other road in that territory for less. Here was a moral obligation we owed that man who had broken the general standard. They next went to another road, I believe the Santa Fe, and that road came into line. Then they went to several others and they yielded, and finally they turned to the Wabash, and it refused to grant the demand.

Mr. DAVENPORT. Would it interrupt you if I asked a question?

Mr. FULLER. Not at all.

Mr. DAVENPORT. Was not the combination between your organization and the officers of those other railroads directly in violation of the law?

Mr. FULLER. No, sir; I think not.

Mr. DAVENPORT. Is it not absolutely within the prohibition both of the Sherman antitrust act and the act to regulate commerce?

Mr. FULLER. I do not think so.

Mr. DAVENPORT. And were not really the acts that he enjoined by this contempt order, which he afterwards dissolved—had the United States under the Sherman antitrust act proceeded—would not the court have held that that combination must be dissolved, and those acts must be restrained?

Mr. FULLER. I would say that if combinations of employers to fix wages was considered a violation of the antitrust law, and that law was enforced, a lot of people whom the gentleman represents would be behind the bars a great part of their time, for they have a perpetual combination, the purpose of which is to keep down wages.

Mr. DAVENPORT. Is that the reason why this particular combination that you speak of is lawful?

Mr. FULLER. I say there is nothing unlawful about a labor organization saying to a man who has a competitor, "If you grant an advance in wages we will resort to a strike to make your competitor do so." In that case we were only threatening to exercise a lawful right. We have a right to strike and we will do it, and we will threaten to do it.

Here is another injunction on page 544.

Mr. ALEXANDER. What was the result of it all; did you get any advances?

Mr. FULLER. The result of it was that Mr. Ramsey, the president of the Wabash, had to take his medicine; he had to grant the increase. I tell you, gentlemen, that when men are organized for the purpose of making a demand to better their condition there is some sentiment in it; there has got to be some. There has to be sentiment in all movements, and when they get about ready to strike, for a court to come in

and enjoin them from doing so demoralizes the ranks of the men, and that moment for action is the psychological moment, and when that is destroyed you can not in many instances regain it. That is what they seek to do by issuing these *ex parte* injunctions, and as to a large number of the injunctions that are issued, the judges know well enough that if they are protested they can not stand. They issue them to prevent strikes.

In this injunction on page 544 I find this language.

"are hereby especially restrained and enjoined from in *any manner, directly or indirectly, delaying, hindering, or obstructing the receipt or movement of any coal by said Cleveland, Loraine and Wheeling Railroad Company.*"

It further says:

"or otherwise obstructing, interfering with, hindering or delaying," and so forth.

Well, it is a very easy matter to hinder and delay the operation of trains; a strike will do it. I alone could create a condition down here on the Pennsylvania Railroad, if I were an employee, that would probably hold up one of their fast passenger trains for an hour or so, by refusing to go out after I was called.

Mr. ALEXANDER. But that is not what the judge meant.

Mr. FULLER. He did not qualify the words and they were open to broad interpretation.

Mr. ALEXANDER. He didn't refer there to any—

Mr. FULLER. He said "from in any manner, directly or indirectly, delaying." He also said "or otherwise delaying."

Mr. ALEXANDER. Wait a minute. Hear my question. The judge did not mean by the word hinder there that you should not strike, did he; but rather that after you had struck you should not delay other men from going to work. Was not that what the judge had in mind?

Mr. FULLER. He does not say whether it is before the strike or after it.

Mr. ALEXANDER. Hindering other men from being able to go to work.

Mr. FULLER. If he persuaded them to not take employment he would be hindering or delaying, if not directly, indirectly, the movement of traffic on that road, and I think the decisions of the courts will bear out that construction of such words.

Mr. PALMER. Suppose you persuade him with a club, how would that be?

Mr. FULLER. It says indirectly, and I believe a club is rather direct. There is nobody here justifying a club, so far as that is concerned. I want to confine my argument to that which is proper and legitimate. I say, however, that so far as the club is concerned the injunction is not the remedy. That should be met with the police power.

Mr. ALEXANDER. If a judge says you shall not hinder the running of a train, does anyone understand by that that he means that you shall not strike, that you shall not quit labor?

Mr. FULLER. Yes; in view of the fact that men have been restrained from those very things, those peaceable things, and the courts have held that persuasion in these injunction cases is wrong, and have restrained men from leaving the service or quitting the service of a railroad, and in view of that we are justified in taking that meaning out of it. And another thing: The injunction is an extraordinary remedy, and it should be clear and specific; if it meant persuasion by

wrong means, why did it not say so? And I might as well here say these injunctions are drawn by these gentlemen, these lawyers, who are here asking you to not pass this legislation; they are the men who draw them, and they are then taken to the judges, and the judges sign them.

You have heard these gentlemen's arguments, and do you suppose for a minute that any of our good friends on the other side, in view of what they have said, and in view of the length to which they would apply the injunctions, when they go up and make a prayer for an injunction that they are not going to get everything in it they can to trip the laboring men up? I say they will. And the next fellow that comes along and asks for an injunction will take this fellow's injunction for a basis and put a few more words to it that are still more objectionable, and the judge signs it. Now, is it any wonder that the men are restrained from doing perfectly legitimate things.

Here is another injunction, on page 546.

Interfering with, intimidating, or otherwise injuring, inconveniencing, or delaying, and so forth.

Here is another one, on page 449:

From entering into or continuing in the employment of plaintiff, or to influence or induce such persons not to enter or to leave his employment.

Here is one issued in New York against the cigarmakers:

It is further ordered that the defendants, each and all of them, and their and each and all of their attorneys, agents, and servants of each of them, be, and they are hereby, enjoined and restrained until the final determination of this action from ordering, directing, planning, and knowingly permitting picketing—

Knowingly permitting it:

and from paying and promising to pay to any former employee of the plaintiff any sum of money for the purpose of continuing organized, concerted, and combined action on the part of said former employees of plaintiffs with the object of preventing the plaintiffs from carrying on their business.

Mr. PALMER. What is the matter with that injunction? The one you read just now?

Mr. FULLER. It prevents them from paying out strike benefits; it specifically prevents them from picketing—placing any men where they can talk to other men. We hold that we have a right to picket, and we insist on that and never will yield it.

Mr. GILLETT. How far would that right of talking go?

Mr. FULLER. We have a right to peaceably present our case to any man seeking employment in our place or any man who is working in our place and asking him to withhold his employment or withdraw it.

Mr. GILLETT. You do not go beyond that?

Mr. FULLER. That is my idea.

Mr. GILLETT. Your idea is that you have a right to peaceably talk with a man?

Mr. FULLER. Yes, sir.

Mr. PALMER. You do not justify the entertainment committee?

Mr. FULLER. It depends on what you mean by the entertainment committee.

Mr. GILLETT. You and the people you represent are not in favor of that class of picketing whereby force and violence are used?

Mr. FULLER. We are opposed to violence in any form. It is true

that those things happen under picketing, but because this privilege is abused is no reason why the liberty should be taken away.

Mr. GILLET. Would you object to a provision in the injunction which would say that you shall not picket in a violent or improper manner?

Mr. FULLER. I want to say this: I am as much opposed to violence in strikes as anyone. But so far as the use of the injunction to prevent violence is concerned, we are against it. We say the criminal law is adequate, and the labor injunction is a new innovation; they got along without it for years in this country, and they could get along without it now. These people want the injunction because it serves their purpose. They have condemned indictment and trial by jury. They are presenting the same arguments here that were presented in favor of the court of star chamber, and it all comes in the name of law and order.

Mr. PALMER. While you are on that subject I wish you would tell us where anybody was ever hurt by one of these injunctions?

Mr. FULLER. Well, I think any man who is restrained of his personal liberty is hurt about as bad as he can be.

Mr. PALMER. That is, theoretically.

Mr. FULLER. I think these injunctions which I have quoted from justify the statement that they have been restrained of their liberty in many instances; what could be more injurious to an American than to enjoin him from exercising his lawful right to quit the service of his employer because he will not increase his wages.

And that has been done. It has been done in several instances, and in one instance so that it was condemned by a higher court and by the Judiciary Committee of this House. I think that is a sufficient answer.

Mr. ALEXANDER. But that is not what you referred to a moment ago—that there is any restraint on a man's quitting work, as I understand it; but restraint comes in his persuasion, keeping others from quitting work, and so forth. Is not that what you stated a moment ago?

Mr. FULLER. We claim he is hurt when he is not permitted to try, in a proper way, to persuade or induce others to quit work. We claim that is a right we have, and we are going to contend for it, and we have a good public sentiment behind us. The American people will not stand this much longer. It was stated here to-day that this question has been made the issue in two campaigns and was turned down, but I deny that. It is true that it was in the platforms of one or two parties which were defeated, but there were other issues which interested the general public more, and those victories turned on these questions.

Mr. Davenport read from a speech of Senator Foraker, of Ohio, in 1904, in opening the campaign of that year for the Republicans, but since that time a Republican President who was elected that year has come out and said there should be legislation on this subject.

Mr. ALEXANDER. I want to ask you another question. Don't you find that the courts since you have begun this very proper agitation are treating it differently from what they did at the outset?

Mr. FULLER. No; I do not think so.

Mr. ALEXANDER. How recently have injunctions been issued that you complain of?

Mr. FULLER. This injunction of Judge Adams was issued in 1903. Injunctions are being issued by Judge Holdem enjoining the printers from doing most everything, lawful and unlawful. I have not read them.

Mr. ALEXANDER. How recent were Judge Holdem's.

The CHAIRMAN. That was a State court, was it not?

Mr. FULLER. I believe so.

Mr. DAVENPORT. Sustained by the supreme court of the State, was it not?

Mr. FULLER. I could not say as to any particular injunction. I want to quote you what he said——

The CHAIRMAN. That is the State court, and that is not within our jurisdiction.

Mr. FULLER. I take this from a newspaper. This is what he said in sentencing some printers:

It is not a question of whether the injunction is right or wrong. That will be decided by the upper courts, but while it is in force and effect it must be obeyed.

It was not a question in the Wabash Company case whether it was right or wrong. It did its work for a month; it tied the hands of the men.

But it is said they are required to give a bond. Aren't they? And if you are injured, can you not recover? Well, it is surprising to know what little value these judges put upon the rights of the employees in these cases. Here is an injunction issued by District Judge Kohlsaat against the printers, and the bond is fixed at the penal sum of only \$500. At the best, if the bond were made for a million dollars, the damage done is hard to measure in dollars and cents. How could we say how much we were damaged in the Wabash case? How could we have said that we would have won that strike if the injunction had not been issued? It was all problematical, no matter which way it went.

We could not tell anything about it, and it is absolutely impossible to measure an injury caused under such conditions in dollars and cents, and I say that it is a question of a restriction of personal liberty, and no dollars and cents can compensate that.

Mr. Chairman, there has been considerable reference made here to the Chicago strike of 1904. The organizations I represent had nothing to do with that strike, and I am not here to either approve or defend it.

I have here a statement of Mr. Debs himself with regard to that strike. It is in the form of a newspaper article, in answer to an article written by Ex-President Grover Cleveland, and I would like to submit it to the committee.

Mr. LITTLE. I hope that it does not attack Grover Cleveland.

Mr. FULLER. I want to ask if it is proper, in view of what has been said here about us not presenting more than one or two cases of this injunctive power being abused, for me to append a number of such injunctions?

The CHAIRMAN. I think you might do that.

Mr. GILLETT. I think that it would be a very good idea for you to do so.

Mr. PARKER. Before you close. You had a newspaper article about the Chicago typographical strike. Did that newspaper article show the words of the injunction?

Mr. FULLER. I quoted a statement from Justice Holdem.

Mr. PARKER. Yes.

Mr. FULLER. No, sir; that did not show it.

Mr. PARKER. Did the newspaper article show the words of the injunction?

Mr. FULLER. No, sir. It was just a comment. But I will say this: That the good citizens of Chicago, including the ministers, denounced that injunction from one end of the city to the other.

Mr. ALEXANDER. You understood that Mr. Little objected to your putting in that article if it criticised Grover Cleveland?

Mr. LITTLE. It will withdraw that objection.

The CHAIRMAN. Do you want to go on now, Mr. Spelling?

Mr. SPELLING. No, sir; I do not want to go on at all until Mr. Mayer or whoever is to speak on the other side does speak for the opposition. That is one reason. Another reason is that I do not feel well enough.

Mr. DAVENPORT. I want to say further that Gen. James M. Beck, former Attorney-General, who is general counsel for our association, which, by the way, is not a railroad organization, has prepared a brief which we would like to submit, and which perhaps you would like to examine before you do reply.

Mr. SPELLING. Mr. Chairman, I want to say that in what I said to Mr. Fuller when he started to talk to the committee I did not mean any offense to him, and if it looked like it, I apologize for it.

Mr. FULLER. I accept that; I have no feeling in the matter.

Mr. SPELLING. My idea was simply professional, and I wanted to get the record straight. I had reason to believe that it was on our side, but I wanted the record to show that he did represent a great organization of labor. I do not think it necessary to go any further along that line.

There is some little difference of opinion as to what is expedient. That might bother anybody. I will touch the other allegations when I come to address you again.

(At 4.30 o'clock p. m. the committee adjourned.)

THE FEDERAL GOVERNMENT AND THE CHICAGO STRIKE—EUGENE V. DEBS'S REPLY TO GROVER CLEVELAND'S MAGAZINE ARTICLE.

In the July issue of McClure's Magazine, ex-President Grover Cleveland has an article on "The Government in the Chicago strike of 1894." That there may be no mistake about the meaning of "government" in this connection it should be understood that Mr. Cleveland has reference to the Federal Government, of which he was the executive head at the time of the strike in question, and not to the State government of Illinois or the municipal government of Chicago, both of which were overridden and set at defiance by the Executive authority, enforced by the military power of the Federal Government, under the administration of Mr. Cleveland.

Cleveland vindicates himself.—The ex-President's article not only triumphantly vindicates his Administration, but congratulates its author upon the eminent service he rendered the Republic in a critical hour when a labor strike jarred its foundations and threatened its overthrow.

It may be sheer coincidence that Mr. Cleveland's eulogy upon his patriotic Administration, and upon himself as its central and commanding figure, appeared on the eve of a national convention composed largely of his disciples who were urging his fourth nomination for the Presidency for the very reasons set forth in the article on the Chicago strike.

His knowledge secondhand.—However this may be, it is certain that of his own knowledge ex-President Cleveland knows nothing of the strike he discusses; that the evidence upon which he acted officially and upon which he now bases his conclusions was *ex parte*, obtained wholly from the railroad interests and those who represented or were controlled by these interests, and it is not strange, therefore, that he falls into a series of errors beginning with the cause of the disturbance and running all

through his account of it, as may be proved beyond doubt by reference to the "Report on the Chicago Strike" by the "United States strike commission," of his own appointment.

What was the Chicago strike? Simply one of the many battles that have been fought and are yet to be fought in the economic war between capital and labor. Pittsburg, Homestead, Buffalo, Latimer, Pana, Coeur d'Alene, Cripple Creek, and Telluride recall a few of the battles fought in this country in the world-wide struggle for industrial emancipation.

When the strike at Chicago occurred, did President Cleveland make a personal investigation? No.

Did he grant both sides a hearing? He did not.

In his 14-page magazine article what workman, or what representative of labor, does he cite in support of his statements or his official acts? Not one.

I aver that he received every particle of his information from the capitalist side; that he was prompted to act by the capitalist side; that his official course was determined wholly, absolutely by and in the interest of the capitalist side, and that no more thought or consideration was given to the other side, the hundreds of thousands of workmen, whose lives and whose wives and babes were at stake, than if they had been so many swine or sheep that had balked on their way to the shambles.

The object of Federal interference.—From the Federal judge who sat on the bench as the protégé of the late George M. Pullman, to whose influence he was indebted for his appointment—as he was to the railroad companies for the annual passes he had in his pocket—down to the last thug sworn in by the railroads and paid by the railroads (p. 340, Report of Strike Commission) to serve the railroads as United States deputy marshals, the one object of the Federal court and its officers was not the enforcement of law and preservation of order, but the breaking up of the strike in the interest of the railroad corporations, and it was because of this fact that John P. Altgeld, governor of Illinois, and John P. Hopkins, mayor of Chicago, were not in harmony with President Cleveland's Administration and protested against the Federal troops being used in their State and city for such a malign purpose.

This is the fact, and I shall prove it beyond doubt before this article is concluded.

Cleveland omits reference to Judge Woods.—The late Judge William A. Woods figured as one of the principal judges in the Chicago affair, issuing the injunctions citing the strikers to appear before him, and sentencing them to jail without trial; but President Cleveland discreetly omits all reference to him; and although he introduces copies of many documents, his article does not include copies of the telegrams that passed between Judge Woods, from his home at Indianapolis, and the railroad managers at Chicago before he left home to hold court in the latter city.

Judge Woods had the distinction of convicting the writer and his colleagues without a trial and of releasing William W. Dudley, of "blocks-of-five" memory, in spite of a trial.

Judge Woods is dead, and I do not attack the dead. I have to mention his name, and this of itself is sufficient.

Pullman's contempt of court.—During the strike the late George M. Pullman was summoned to appear before the Federal court to give testimony. He at once had his private car attached to an east-bound train and left the city, treating the court with sovereign contempt. On his return, accompanied by Robert Todd Lincoln, his attorney, he had a tête-à-tête with the court "in chambers," and that ended the matter. He was not required to testify, nor to appear in open court. The striker upon whom there fell even the suspicion of a shadow of contempt was sentenced and jailed with alacrity. Not one was spared, not one invited to a "heart to heart" with his honor "in chambers."

A challenge to Cleveland.—In reviewing the article of ex-President Cleveland I wish to adduce the proof of my exceptions and denials, as well as the evidence to support my affirmations, but I realize that in the limited space of a single issue it is impossible to do this in complete and satisfactory manner; and as the case is important enough to be revived, after a lapse of ten years, by Mr. Cleveland, and as the side of labor has never yet reached the people, I am prompted to suggest a fair and full hearing of both sides on the public rostrum or in a series of articles, and I shall be happy to meet Mr. Cleveland, or anyone he may designate, in such oral or written discussion, and if I fail to relieve the great body of railroad men who composed the American Railway Union of the criminal stigma which Mr. Cleveland has sought to fasten upon them, or if I can not produce satisfactory evidence that the crimes charged were instigated by the other side, the side in whose interest President Cleveland brought to bear all the powers of the Federal Government; I will agree to publicly beg forgiveness of the railroads, apologize to the ex-President, and cease my agitation forever.

The cause of the Pullman strike.—That Mr. Cleveland knows nothing about the Chicago strike except what has been told him by the railroads and their emissaries, that he has not even read the report of his own strike commission, is apparent from the very beginning of his article. He says "The strike was provoked by a reduction of wages." This is not true. The fact is that although wages had been repeatedly reduced the employees did not strike. They appointed a committee to meet the officials and ask why, if their wages had to be reduced, the high rents they were obliged to pay the Pullman company were not correspondingly lowered. Failing to secure redress, they called upon Mr. Pullman himself. He promised to investigate. They returned happy. The following day the committee were discharged, and thereupon all the employees laid down their tools and walked out of the shops. That is what provoked the strike and the report of the strike commission proves it.

The court's partiality to the railroads.—It is easy for Mr. Cleveland and others who were on the side of the railroads to introduce copies of documents, reports, etc., for the simple reason that the Federal court at Chicago compelled the telegraph companies to deliver up copies of all our telegrams and copies of the proceedings of our convention and other meetings of the American Railway Union, including secret sessions, but the Federal court did not call upon the railroads to produce the telegrams that passed among themselves, nor between their counsel and the Federal authorities, nor the printed proceedings of the General Managers' Association, for public inspection and as a basis for criminal prosecution.

Had the strike won.—Nevertheless, there is available proof sufficient to make it clear to the unprejudiced mind, to the honest man who seeks the truth, that the United States Government, under the administration of President Grover Cleveland, was at the beck and call of the railroad corporations, acting as one through the General Managers' Association, and that these corporations, with the Federal courts and troops to back them up, had swarms of mercenaries sworn in as deputy marshals to incite violence as a pretext for taking possession of the headquarters of the American Railway Union by armed force, throwing its leaders into prison without trial, and breaking up a strike that was fairly won, without a blow being struck, and breaking down the Union that was victorious, maligning, browbeating, and persecuting its peaceable and law-abiding members and putting the railroad corporations in supreme control of the situation.

That was the part of President Cleveland in the Chicago strike, and for this achievement the railroad combine and the trusts in general remember him with profound gratitude and are not only willing but anxious that he shall be President of the United States forever more.

A precedent for future action.—In the closing paragraph of his article Mr. Cleveland compliments his administration upon having cleared the way "which shall hereafter guide our nation safely and surely in the exercise of its functions which represents the people's trusts." The word "people's" is not only superfluous, but mischievous and fatal to truth. Omit that and the ex-President's statement will not be challenged.

Cleveland's first move.—How did President Cleveland begin operations in the Chicago strike? Among the first things he did, as he himself tells us, was to appoint Edwin Walker as special counsel for the Government.

Who was Edwin Walker?

"An able and prominent attorney," says Mr. Cleveland.

Is that all?

Not quite. At the time President Cleveland and his attorney-general, Richard Olney, designated Edwin Walker, upon recommendation of the railroads, as special counsel to the Government, for which alleged service he was paid a fee that amounted to a fortune, the said Edwin Walker was already the regular counsel of the Chicago, Milwaukee and St. Paul Railway.

Turning for a moment to "Who's Who in America," we find:

"Walker, Edwin, lawyer, removed to Chicago in 1865; has represented several railroads as general solicitor since 1860. Illinois counsel for C., M. & St. P. R. R. since 1870; also partner in firm of W. P. Rend & Co., coal miners, and special counsel for the United States in the lawsuits growing out of the great railroad strike of 1894."

The significance of Walker's appointment.—What is the significance of such an appointment under such circumstances? Can it be in doubt a single moment? Does it not indicate clearly that the railroads controlled the Government, that President Cleveland did the bidding of the General Managers' Association by appointing as special counsel of the Government their own attorney to prosecute the striking employees and use the powers of Government to crush them into submission? Can there be a shadow of doubt about it in the mind of any candid man?

Why the mails were obstructed.—Here is the situation: There is a conflict between the General Managers' Association, representing the railroads, and the American

Railway Union, representing the employees. Perfect quiet and order prevail, as I shall show, but the railroads are beaten to a standstill, utterly helpless, can not even move a mail car, simply because their employees have quit their service and left the premises in a body. Note also that the employees were willing to haul the mail trains, and all other trains, refusing only to handle Pullman cars until the Pullman Company should consent to arbitrate its disagreement with its striking and starving employees. But the railroad officials determined that if the Pullman cars were not handled the mail cars should not move.

This is how and why the mails were obstructed and this was the pretext for Federal interference. In a word, President Cleveland, obedient to the railroads, took sides with them and supported them in their conflict with their employees with all the powers of the Federal Government.

Commission's report v. Cleveland.—To bear out these facts it is not necessary to go outside of the official report of the strike commission, which anyone may verify at his pleasure. The only reason I do not incorporate the voluminous evidence is that the space at my command must be economized for other purposes.

It is thus made clear that President Cleveland and his Cabinet placed the Government at the service of the railroads.

Edwin Walker, their own attorney, made the agent of the Government and put in supreme command of the railroad and Government forces! What an unholy alliance! And what a spectacle and object lesson!

Upon Walker's representations Cleveland acted; upon Walker's demand the Federal soldiers marched into Chicago; upon Walker's command the great Government of the United States obeyed with all the subserviency of a trained lackey.

Suppose Cleveland had appointed Darrow.—Suppose that President Cleveland had appointed Clarence S. Darrow, attorney for the American Railway Union, instead of Edwin Walker, attorney of the General Managers' Association, as special counsel to the Government.

And suppose that Darrow had ordered the offices of the General Managers' Association sacked, the books, papers, and correspondence, including the unopened private letters of the absent officers, packed up and carted away and the offices put under the guard of Federal ruffians, in flagrant violation of the Constitution of the United States, as was done by order of Walker with the offices of the American Railway Union.

And suppose, moreover, that the American Railway Union, backed up by Darrow, agent of the United States Government, had sworn in an army of "thugs, thieves, and ex-convicts" (see official report of Michael Brennan, superintendent of Chicago police to the council of Chicago) to serve the American Railway Union as deputy United States marshals and "conservators of peace and order."

And suppose, finally, that the expected trouble had followed; would anyone in possession of his senses believe that these things had been done to protect life and property and preserve law and order?

That is substantially the case that President Cleveland is trying to make for himself and his administration out of their participation in the Chicago strike.

The railroads the real law breakers.—The implication that runs through Mr. Cleveland's entire article is that the railway corporations were paragons of peace and patriotism, law and order, while the railway employees were a criminal, desperate, and bloodthirsty mob, which had to be suppressed by the strong arm of the Government.

No wonder the ex-President is so dear to the iron heart of the railroad trust, and every other trust that uses the Government and its officers and soldiers to further its own sordid ends.

Let us consider for a moment these simple questions:

Who are the more law-abiding, the predatory railroad corporations or the hard-worked railroad employees?

What railroad corporation in the United States lives up to the law of the land? Not one.

What body of railroad employees violates it? Not one.

Brazen defiance of the law by railroads.—The railroad corporations are notorious for their brazen defiance of every law that is designed to curb their powers or restrain their rapacity.

The railroad corporations have their lobby at Washington and at every State capital; they bribe legislators, corrupt courts, debauch politics, and commit countless other legal and moral crimes against the Commonwealth.

The railway employees are a body of honest, useful, self-sacrificing, peace-loving men, who never have and never will be guilty of the crimes committed by their corporate masters.

And yet President Cleveland serves the corporate masters and exalts and glorifies the act while he attempts to absolve the criminals and fasten the insufferable stigma upon honest men.

Nothing further is required to demonstrate beyond all cavil the capitalist-class character of our present Government.

The strike commission's report.—Now for a few facts about the strike. It began May 11, 1894, and was perfectly peaceable and orderly until the army of "thugs, thieves, and ex-convicts," as Superintendent of Police Brennan called them in his official report to the council of Chicago, were sworn in as deputies by the United States marshal at the command of Edwin Walker, attorney of the General Managers' Association and special counsel to the Government. Let us quote the report of the strike commission, consisting of Carroll D. Wright, Commissioner of Labor, who served *ex officio*; John D. Kernan, of New York, and N. E. Worthington, of Illinois, two lawyers, appointed by President Cleveland.

Let it be noted that the railway employees—that is to say, labor, the working class—had no representative on this commission.

From the report they issued we quote as follows:

American Railway Union leaders advise against strike.—"It is undoubtedly true that the officers and directors of the American Railway Union did not want a strike at Pullman and advised against it * * *" (p. xxvii). Yet the people were told over and over and still believe that Debs ordered the strike.

Railroads set the example.—"It should be noted that until the railroads set the example a general union of railroad employees was never attempted" (p. xxxi).

"The refusal of the General Managers' Association to recognize and deal with such a combination of labor as the American Railway Union seems arrogant and absurd when we consider its standing before the law, its assumptions, and its past and obviously contemplated future action" (p. xxxi).

"* * * The rents (at Pullman) are from 20 to 25 per cent higher than rents in Chicago or surrounding towns for similar accommodations" (p. xxxv).

Strike commission contradicts Cleveland.—"The strike occurred on May 11, and from that time until the soldiers went to Pullman, about July 4, 300 strikers were placed about the company's property, professedly to guard it from destruction or interference. This guarding of property in strikes is, as a rule, a mere pretense. Too often the real object of guards is to prevent newcomers from taking the strikers' places, by persuasion, often to be followed, if ineffectual, by intimidation and violence. The Pullman Company claims this was the real object of these guards. These strikers at Pullman are entitled to be believed to the contrary in this matter because of their conduct and forbearance after May 11. It is in evidence and uncontradicted that no violence or destruction of property by strikers or sympathizers took place at Pullman, and that until July 3 (when the Federal troops came upon the scene) no extraordinary protection was had from the police or military against even anticipated disorder" (p. XXXVIII).

This paragraph from the report of Mr. Cleveland's own commission is sufficient answer to Mr. Cleveland's article. It is conclusive, crushing, overwhelming.

Deputies started the trouble.—There was no trouble at Pullman, nor at Chicago, nor elsewhere until the railroad-United States deputy marshals were sworn in, followed by the Federal troops.

Governor Altgeld, patriot and statesman, knew it and protested against the troops.

Mayor John P. Hopkins knew it and declared that he was fully competent to preserve the peace of the city.

Superintendent of police called them "thugs."—Michael Brennan, superintendent of the Chicago police, knew it and denounced the deputy marshals, Edwin Walker's hirelings, the General Managers' Association's incendiaries and sluggers, as "thugs, thieves, and ex-convicts."

These were the "gentlemen" President Cleveland's Government pressed into service upon requisition of the railroads to preserve order and protect life and property, and this is what the ex-President calls "The power of the National Government to protect itself in the exercise of its functions."

As to just what these "functions" are, when Grover Cleveland is President, the railroad corporations understand to a nicety and agree to by acclamation.

Peace reigned supreme.—The only trouble there was when the "deputies" were sworn in, followed by the soldiers, was that there was no trouble. That is the secret of subsequent proceedings. The railroads were paralyzed. Profound peace reigned. The people demanded of the railroads that they operate their trains. They could not do it. Not a man would serve them. They were completely defeated, and the banners of organized labor floated triumphant in the breeze.

Beaten at every point, their schemes all frustrated, outgeneraled in tactics and

strategy, the corporations played their trump card by an appeal to the Federal judiciary and the Federal Administration. To this appeal the response came quick as lightning from a storm cloud.

Peace fatal to Managers' Association.—Peace and order were fatal to the railroad corporations. Violence was as necessary to them as peace was to the employees. They realized that victory could only be snatched from labor by an appeal to violence in the name of peace.

First. Deputy marshals. The very day they were appointed the trouble began. The files of every Chicago paper prove it. The report of the strike commission does the same.

That was what they were hired for, and their character is sufficient evidence of their guilt.

Second. Fires (but no Pullman palace cars were lighted) and riots (but no strikers were implicated).

Third. The capitalist owned newspapers and Associated Press flashed the news over all the wires that the people were at the mercy of a mob and that the strikers were burning and sacking the city.

Fourth. The people (especially those at a distance, who knew nothing except what they saw in the papers) united in the frenzied cry: "Down with anarchy! Down with the A. R. U.! Death to the strikers!"

Disturbances started by deputy marshals.—The first trouble instigated by the deputy marshals was the signal for the Federal court injunctions, and they came like a succession of lightning flashes.

Next, the general offices of the American Railway Union were sacked and put under guard and communication destroyed. (Later Judge Grosscup rebuked the Federal satraps who committed this outrageous crime, but he did not pretend to bring them to justice.)

Next, the leaders of the strike were arrested, not for crime, but for alleged violation of an injunction.

Next, they were brought into court, denied trial by jury, pronounced guilty by the same judge who had issued the injunction, and sent to jail from three to six months.

The "concluding words not yet written."—The Supreme Court of the United States, consisting, wholly of trained and successful corporation lawyers, affirmed the proceedings, and President Cleveland says that they have "written the concluding words of this history."

Did the Supreme Court of the United States write the "concluding words" in the history of chattel slavery when it handed down Chief Justice Taney's decision that black men had "no rights that the white man was bound to respect?"

These "concluding words" will but hasten the overthrow of wage slavery as the "concluding words" of the same supreme court in 1857 hastened the overthrow of chattel slavery.

The railroad corporations would rather have destroyed their property and seen Chicago perish than see the American Railway Union triumphant in as noble a cause as every prompted sympathetic, manly men to action in this world.

Peace overtures turned down.—The late Mayor Pingree, of Detroit, came to Chicago with telegrams from the mayors of over fifty of the largest cities urging that there should be arbitration. (P. XXXIX, report of strike commission.) He was turned down without ceremony and afterwards declared that the railroads were the only criminals and that they were responsible for all the consequences.

On June 22, four days before the strike against the railroads, or rather the boycott of Pullman cars, took effect, there was a joint meeting of the railroad and Pullman officials. (P. XLII, report of strike commission.) At this meeting it was resolved to defeat the strikers, wipe out the American Railway Union, and, to use their exact words, "That we act unitedly to that end."

This was the only joint meeting of the kind that had ever been held between the officials of the railroad companies and the Pullman Company. They mutually determined to stand together to defeat the strike and destroy the union.

Now, to show what regard these gentlemen have for courts and law and morals, this incident will suffice:

Railroad officers perjure themselves.—When the officers of the American Railway Union were indicted by a special and packed grand jury and placed on trial for conspiracy, the general managers of the railroads were put on the witness stand to testify as to what action had been taken at the joint railroad and Pullman meeting above described, and each and every one of them perjured himself by swearing that he had no recollection of what had taken place at that meeting. Sitting within a few feet of them, I saw their faces turn scarlet under the cross-examination, know-

ing that they were testifying falsely, that the court knew it, and that everyone present knew it, but they stuck to their agreement and uniformly failed to remember that they had resolved to stand together, the railroads agreeing to back the Pullman Company in defeating their furnishing employees, and the Pullman Company pledging itself to stand by the railroads in destroying the American Railway Union.

That is what their own record shows they resolved to do, and a little later they concluded to forget all about it, and to this they swore in a Federal court of law.

I have copies of the court records, including the testimony, to prove this, and the files of all the Chicago dailies of that time contain the same testimony.

These are the gentlemen who have so much to say about law and order, the vaunted guardians of morals and good citizenship.

When A. B. Stickney, president of the Chicago Great Western, who had been victimized by them, told them to their faces that there was not an honest official among them, and that he would not trust one of them out of his sight, they did not attempt any defense, for they knew that their accuser was on the inside and in position to make good his assertions.

The deputies as viewed by the commission.—I must now introduce a little evidence from the report of the strike commission bearing upon the United States deputy marshals who were sworn in by the railroads "to protect life and property and preserve the peace!"

Page 356: Superintendent Brennan of the Chicago police testifies before the commission that he has a number of deputy marshals in the county jail, arrested while serving the railroads as United States deputy marshals for highway robbery.

Page 370: Ray Stannard Baker, then a reporter for the Chicago Record, now on the staff of McClure's Magazine, testified as follows in answer to the question as to what he knew of the character of the deputy marshals: "From my experience with them it was very bad. I saw more cases of drunkenness, I believe, among the United States deputy marshals than I did among the strikers."

A newspaper reporter's evidence.—Pages 366 and 367: Malcomb McDowell, reporter for the Chicago Record, testified: "The United States deputy marshals and the special deputy sheriffs were sworn in by the hundreds about the 3d and 4th of July, and prior to that, too, and everybody who saw them knew they were not the class of men who ought to be made deputy marshals or deputy sheriffs. * * * In regard to most of the deputy marshals, they seemed to be hunting trouble all the time. * * * At one time a serious row nearly resulted because some of the deputy marshals standing on the railroad track jeered at the women that passed and insulted them. * * * I saw more deputy marshals drunk than I saw strikers drunk."

These were Edwin Walker's justly celebrated guardians of the peace.

Page 370: Herold I. Cleveland, reporter for the Chicago Herald, testified: "I was on the tracks of the Western Indiana fourteen days. * * * I saw in that time a couple of hundred deputy marshals. I think they were a very low, contemptible set of men."

Deputies hired and paid by the railroads.—Now follows what the strike commissioners themselves have to say about the deputy marshals, and their words are specially commended to the thoughtful consideration of their chief, President Cleveland: "United States deputy marshals to the number of 3,600 were selected by and appointed at request of the General Managers' Association and of its railroads. They were armed and paid by the railroads and acted in the double capacity of railroad employees and United States officers. While operating the railroads they assumed and exercised unrestricted United States authority when so ordered by their employers, or whenever they regarded it as necessary. They were not under the direct control of any Government official while exercising authority. This is placing officers of the Government under control of a combination of railroads. It is a bad precedent that might well lead to serious consequences."

The Government serves the corporations.—Here we have it, upon the authority of President Cleveland's own commission, that the United States Government under his administration furnished the railroad corporations with Government officers, in the form of deputy marshals, to take the places of striking employees, operate the trains, and serve in that dual capacity in any way that might be required to crush out the strike. This is perhaps more credit than the ex-President expected to receive. His own commission charges him, in effect, with serving the railroads as strike-breaker by furnishing Government employees to take the places of striking railroad men and arming them with pistols and clubs and with all the authority of Government officials.

Page after page bears testimony of the disreputable character of the deputy marshals sworn in to the number of several thousand and turned loose like armed bullies to "preserve the peace."

The report of the strike commission contains 681 pages. I have a mass of other testimony, but for the purpose of this article have confined myself to the report of Mr. Cleveland's own commission.

How the strikers were defeated.—Hundreds of pages of evidence are given by impartial witnesses to establish the guilt of the railroad corporations, to prove that the leaders of the strike counseled peace and order, that the strikers themselves were law-abiding and used their influence to prevent disorder; that there was no trouble until the murderous deputy marshals were sprung upon the community, and that these instigated trouble to pave the way for injunctions and soldiers and change of public sentiment, thereby defeating the strike.

Confirmed by Cleveland.—President Cleveland unwittingly, perhaps, confirms this fact. On page 232 of his article he quotes approvingly the letter written to Edwin Walker, special counsel of the Government and regular counsel of the railroads, by Attorney-General Richard Olney, as follows: "It has seemed to me that if the rights of the United States (railroads?) were vigorously asserted in Chicago, the origin and center of the demonstration, the result would be to make it a failure everywhere else, and to prevent its spread over the entire country."

That is the point, precisely the point, and Mr. Cleveland admits it. It is not the "obstruction of the mails," nor disorder, nor the violation of law that arouses Mr. Cleveland's government and prompts it to "vigorous" assertion of its powers, but the "demonstration"—that is, the strike against the railroads—and to put this down, not to move the mails or restore order, a mere pretext, which was fully exposed by Governor Altgeld, was the prime cause of Federal interference, and to "make it a failure everywhere" all constitutional restraints were battered down, and as a strike-breaker President Cleveland won imperishable renown.

Strike leaders exonerated by commission.—Particular attention is invited to the following, which appears upon page XLV:

"There is no evidence before the Commission that the officers of the American Railway Union at any time participated in or advised intimidation, violence, or destruction of property. They knew and fully appreciated that as soon as mobs ruled, the organized forces of society would crush the mobs and all responsible for them in the remotest degree, and that this means defeat."

And yet they all served prison sentences. Will President Cleveland please explain why? And why they were refused a trial?

In whose interest were crimes committed?—Read the above paragraph from the report of the strike commission and then answer these questions:

To whose interest was it to have riots and fires, lawlessness and crime?

To whose advantage was it to have disreputable "deputies" do these things?

Why were only freight cars, largely hospital wrecks, set on fire?

Why have the railroads not yet recovered damages from Cook County, Ill., for failing to protect their property? Why are they so modest and patient with their suits?

The riots and incendiarism turned defeat into victory for the railroads. They could have won in no other way. They had everything to gain and the strikers everything to lose.

The violence was instigated in spite of the strikers, and the report of the commission proves that they made every effort in their power to preserve the peace.

When a crime is committed in the dark the person who is supposed to be benefited by it is sought out as the probable culprit, but we are not required to rely on presumption in this case, for the testimony against the railroads is too clear and complete and convincing to admit of doubt.

Imprisoned without trial.—If the crimes committed during the Chicago strike were chargeable to the strikers, why were they not prosecuted? If not, why were they sentenced to prison?

The fact that they were flung into prison without evidence and without trial and the fact that the supreme court affirmed the outrage seemed to afford Mr. Cleveland special satisfaction and he accepts what he calls the "concluding words" of the court as his own final vindication.

Judge Trumbull's opinion.—The late Senator and judge, Lyman Trumbull, for many years United States Senator, chairman of the Senate Committee on Judiciary, supreme judge of Illinois, author of the thirteenth amendment to the Constitution of the United States, personal friend of Abraham Lincoln, and, above all, an honest man, wrote: "The doctrine announced by the Supreme Court in the Debs case places every citizen at the mercy of any prejudiced or malicious federal judge who may think proper to imprison him."

President Cleveland doubtless understands the import of these ominous words. Let the people—the working people—whom the ex-President regards merely as a

mob to be suppressed when they peaceably protest against injustice—let them contemplate these words at their leisure.

When the strike was at its height and the railroads were defeated at every turn, the federal court hastily empaneled a special grand jury to indict the strikers. The foreman of this jury was chosen specially because he was a violent union hater, and he afterwards betrayed his own capitalistic colleagues in a matter they had intrusted to his integrity.

The jury was impaneled, not to investigate, but to indict.

A Tribune reporter who refused to verify a false interview before the jury and thereby perjure himself, to incriminate the writer, was discharged. The Chicago Times published the particulars.

An indictment was speedily returned. "To the penitentiary," was the cry of the railroads and their henchmen. A trial jury was impaneled. Not a juror was accepted who was of the same political party as the defendants. Every possible effort was made to rush the strike leaders to the State prison.

The failure of the prosecution.—After all the evidence of the prosecution had been presented they realized that they had miserably failed. Not one particle of incriminating testimony could the railroads produce with all the sleuthhounds they had at their command.

Next came our turn. The general managers were dumfounded when they were, one after the other, put on the stand. Eighty-six witnesses were in court to testify as to the riots and fires. Assistant Chief Palmer and others, members of the fire department, were on hand to testify that when they were trying to extinguish the flames in the railroad yards they caught men in the act of cutting the hose, and that these men wore the badges of deputy marshals. Other witnesses were policemen, who were ready to testify that they had caught these same deputies instigating violence and acts of incendiarism.

The jury dumbfounded.—The jury had been packed to convict. When our evidence began to come in, their eyes fairly bulged with astonishment. There was a perfect transformation scene. The jurors realized that they had been steeped in prejudice and grossly deceived.

The general managers testified that they did not remember what had taken place at the joint general managers' and Pullman meeting. Their printed proceedings were called for. They looked appealingly to Edwin Walker. The terror that overspread their features can never be forgotten by those who witnessed it. Their proceedings would expose their mendacity and convict them of conspiracy and crime. Something must be done and done quickly. Court adjourned for lunch. When it reconvened Judge Grosscup gravely announced that a juror had been suddenly taken ill and that the trial could not proceed.

The suspicious "illness" of a juror.—The next day and the next the same announcement was repeated. We offered to proceed in any of the several ways provided in such exigencies. The prosecution objected. The cry "To the penitentiary!" had subsided. To "let go" was now the order of the railroads. Not another session of court must be held, for their printed proceedings, the private property in the strong box of each manager, and full of matter that would convict them, would have to be produced. All the proceedings of the American Railway Union had been produced in evidence by order of the court, and the court could not refuse to command the railroad officials to produce the proceedings of their association. These proceedings were brought in at the closing session of the trial, but by order of the court the defendants were forbidden to look into them, and Edwin Walker, the Government counsel, watched them with the faithful eye of a trusted guardian.

We were not allowed to examine the proceedings of the General Managers' Association, notwithstanding our proceedings, telegrams, letters, and other private communications had been brought into court by order of the judge, inspected by Edwin Walker and others, and printed in the court records for public inspection.

It was at this point that the court adjourned and the juror was taken ill.

Ten years have elapsed. He is still ill and we are still waiting for the court to reconvene and the trial to proceed.

Government refused to go on with case.—Every proposition to continue the case was fiercely resisted by Edwin Walker, special counsel of the Government and general counsel of the railroads.

Clarence S. Darrow objected to Mr. Walker's appearing in that dual capacity, representing at the same time the Government and the railroads, the supposed justice of the one and the vengeful spirit of the other, but Judge Grosscup overruled the objection.

The trial was postponed again and again, the interest in it gradually subsiding, and many months afterward, when it was almost forgotten, it was quietly stricken from the docket.

Jurors grasped Debs's hand.—When the remaining eleven jurors were discharged by the court, Edwin Walker extended his hand to them, but they rushed by him and surrounded the writer and his codefendants, grasping their hands and assuring them, each and every one of them, that they were convinced of their innocence and only regretted that they had been prevented from returning their verdict accordingly. The details appear in the Chicago papers of that time.

At the very time we were being tried for conspiracy we were serving a sentence in prison for contempt, the programme being that six months in jail should be followed by as many years in penitentiary.

For a jury to pronounce us innocent in substantially the same case for which we were already serving a sentence would mean not only our complete vindication, but the exposure of the Federal court that had, at the behest of the railroads, sentenced us to prison without a trial.

And so the trial was abruptly terminated on account of the alleged illness of a juror, and they could find no other to take his place.

These are the facts, and I have all the documentary evidence in detail, and only lack of space prevents me from making the exhibits in this article.

If President Cleveland or the railroad managers doubt it, I stand ready to meet them face to face in discussion of the issue upon any platform in America.

The greatest industrial battle in history.—The Chicago strike was in many respects the grandest industrial battle in history, and I am prouder of my small share in it than of any other act of my life.

Men, women, and children were on the verge of starvation at the "model city" of Pullman. They had produced the fabulous wealth of the Pullman corporation, but they, poor souls, were compelled to suffer the torment of hunger pangs in the very midst of the abundance their labor had created.

A hundred and fifty thousand railroad employees, their fellow-members in the American Railway Union, sympathized with them, shared their earnings with them, and, after vainly trying in every peaceable way they could conceive to touch the flint heart of the Pullman Company, every overture being resented, every suggestion denied, every proposition spurned with contempt, they determined not to pollute their hands and dishonor their manhood by handling Pullman cars and contributing to the suffering and sorrow of their brethren and their wives and babes. And rather than do this they laid down their tools in a body, sacrificed their situations, and submitted to persecution, exile, and the black list; to idleness and poverty, crusts and rags, and I shall love and honor these moral heroes to my latest breath.

There was more of human sympathy, of the essence of brotherhood, of the spirit of real Christianity, in this act than in all the hollow pretenses and heartless prayers of those disciples of mammon who cried out against it, and this act will shine forth in increasing splendor long after the dollar worshipers have mingled with the dust of oblivion.

Had the Carpenter of Nazareth been in Chicago at the time he would have been on the side of the poor, the heavy laden, and sore at heart, and he would have denounced their oppressors and been sent to prison for contempt of court under President Cleveland's Administration.

President Cleveland says that we were put down because we had acted in violation of the Sherman antitrust law of 1890. Will he kindly state what other trusts were proceeded against and what capitalists were sentenced to prison during his Administration?

He waited ten years to cast his aspersions upon the honor of John P. Altgeld, and if that patriotic statesman had not fallen in the service of the people, if he were still here to defend his official acts, it is not probable that the ex-President would have ventured to assail him.

A tribute to Governor Altgeld.—Reluctantly indeed do I close without the space to incorporate his burning messages to President Cleveland, and at least some brief extracts from his masterly speech on "Government by injunction."

His memory requires no defense, but if it did I could speak better for him than for myself. He never truckled to corporate wealth, he did not compromise with his conscience, he was steadfast in his devotion to truth and in his fidelity to right, and he sought with all his strength to serve the people, and the people will gratefully remember him as one of the true men, one of the great souls, of his sordid age.

The Chicago strike is not yet settled, and its "concluding pages" are yet to be written.

INJUNCTION—STRIKES—PICKETING—INTERSTATE COMMERCE.—*Knudsen et al. v. Benn et al.*, *United States circuit court for the District of Minnesota, fifth division, 123 Federal Reporter, page 636.*—Knudsen and others, who were engaged in the handling of freight at the docks of the Northern Pacific Railway Company at Duluth, Minn., petitioned the court for an injunction against certain men, members of an association of long-shoremen, which should restrain them from interfering with the conduct of the complainants' business. These men, Benn and others, had formerly been in the employment of the freight handling company, but had struck, and it is against any interference with the employees procured to take their places that the company asks this injunction.

An injunction was granted commanding the persons named and all associated with them to desist and refrain from in any manner interfering with, hindering, obstructing, or delaying the complainants' work "by trespassing in and upon the railroad yards and docks of the Northern Pacific Railway Company at Duluth, Minn., for the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any employees of complainants to refuse or fail to perform their duties as such employees; also from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, violence, or abusive or violent language, or persuasion, any of the employees of said complainants to leave their service; also from compelling or attempting to compel, by threats, intimidation, force, violent and abusive language, any person desiring to seek employment with them; also from establishing and maintaining spies and pickets at the place of work of complainants' employees, in, about, or adjacent to the yards and docks of said Northern Pacific Railway Company or in or upon the streets and avenues of the city of Duluth, near by and leading to and from said yards and docks, for the purpose of inducing or compelling, by threats, intimidation, violence, violent or abusive language, or persuasion, any employee of complainants to fail or refuse to perform his duties as such, or for the purpose of interviewing employees of complainants and inducing them not to remain in the complainants' employment."

The grounds on which the injunction was granted are stated by Judge Lochren in the following language:

The principles that govern this case are pretty well settled. Of course, there are some differences in the language used by different judges in such cases, arising more from the varying circumstances than from any real difference in the apprehension of what the law is governing cases of this kind.

The acts here charged constitute an interference with interstate commerce, and I suppose some matters are stated mainly to show that it is a case over which a Federal court has jurisdiction. As Congress has exclusive jurisdiction over commerce among the States and with foreign countries, it is therefore the duty of the Federal courts to safeguard the exercise of interstate commerce and to see that it has protection under the law.

Now, there is no question but that an employee may leave the service of his employer without incurring liability to be required by a court of equity to continue in the service, even if he has contracted to serve for a stated length of time. A breach of such contract may give a right of action at law, but performance will not be enforced in equity. A party may leave the service of his employer, and in the same way an employer may discharge a servant for cause or without cause.

When a servant leaves, or an employer discharges a servant, the connection of the servant with the service ceases, and this is especially so when the employee leaves of his own accord. He has the right to do so if he demands higher wages and the demands are not complied with by the employer. He may leave, but if he does he has no right to insist upon reemployment, or to take means to compel the employer to take him back at higher wages; he has no further interest in the service. Whosoever the employer may engage afterwards to perform the service is a matter of no concern to the former servant, and he has no right to interfere in the matter any longer. He has left the service, and the only way he can return to it is by making a new contract with the employer, who may receive him back or not, as he sees fit. He has no right to do unlawful acts or to interfere with the business or property of the employer to coerce or compel the employer to reinstate him or to accord him higher wages.

The right of laborers to consult together and form unions, if they please, for the purpose of their own advancement and for the obtaining of higher wages, is conceded; and, I suppose, employers have the same right to form unions for the purpose of depressing wages, if they shall see fit to do so. It is a voluntary matter on the one side as well as on the other. The employee has no more right to coerce the employer to give him employment at a rate which he shall name than an employer has to coerce a servant to work at such a rate as he shall determine and dictate.

As this case stands, these individual defendants are not in the employment of the complainants. They have no interest in the complainants' business, and they have no right to interfere with that business in any way. The testimony shows that they are interfering; they admit it themselves. They admit it to the extent that they have been placing "pickets," as they call them, to observe who is employed, and for the purpose of inducing such employees to leave the employment of the complainants.

Fellow-workmen may agree together to leave at once the service of their employer; but having done so, and being no longer interested in that matter, then, notwithstanding certain dicta in cases that have been read from, it does not seem clear to me that they are acting lawfully when they are persuading the servants of their former employer to break their contracts and leave the service. It is a matter that does not concern them any longer. It is a matter that is apparently injurious to their former employer. It seems to me that such an interference in a matter with which they have no rightful concern and which is injurious to another is not lawful.

But, whether it be so or not, it appears in this case, without any dispute, that there have been some unlawful acts, respecting which some of these defendants pleaded guilty to an indictment charging them with such unlawful acts in matters complained of here.

The affidavits of police officers and others also show that there have been assaults and threats made by defendants who have been employed by the complainants in this work against new employees, and that these matters have been continued, and there have been some occurrences since the issuing of this injunctive order.

United States Circuit Court of Appeals.

P. M. ARTHUR et al., intervenors, Appts., v. THOMAS F. OAKES et al.

1. Equity will not enjoin employees of a receiver of a railroad from quitting his service, although the effect of such action will be to cripple the property or prevent or hinder the operation of the road.
2. Employees of the receiver of a railroad may lawfully confer together upon the subject of a proposed reduction of wages, and if not restrained by their contract, may withdraw in a body from the receiver's service because of such reduction, although they expect that such action will inconvenience the receiver and the public.
3. Equity will enjoin any combination or conspiracy among the employees of the receiver of a railroad which has for its object and intent the physical injury of the property in the receiver's possession, or actual interference with the regular continuous operation by him of the railroad.
4. Employees of a receiver of a railroad may be enjoined from disabling rolling stock or other property in the receiver's possession, from interfering with its possession or obstructing its management, and from using force, intimidation, threats, or other wrongful methods against the receiver, his agents, or employees, or persons seeking employment.
5. Illegal combinations are not sanctioned in any degree by the act of Congress of June 29, 1886, legalizing the incorporation of national trades unions.
6. Trade unions are not prohibited an injunction against illegal combinations of workmen.
7. Employees of the receiver of a railroad may be enjoined from combining and conspiring to quit his service with the object and intent of crippling the property in his custody, or embarrassing the operation of the railroad.
8. A strike is not unlawful if it is merely a combination among employees having for its object their orderly withdrawal in large numbers or in a body from their employer's service to accomplish some lawful purpose.
9. Injunction is a proper remedy to restrain threatened acts of employees of a railroad receiver which would inflict irreparable loss upon the property and seriously prejudice the interests of the public involved in the regular continuous operation of the road.

Decided October 1, 1894.

Appeal by intervening petitioners from a decree of the circuit court of the United States for the eastern district of Wisconsin, denying their motion to strike out certain portions of an injunction restraining employees of the receiver of the Northern Pacific Railway Company from interfering with the property in his hands. Reversed in part.

The case sufficiently appears in the opinion.

Argued before Harlan, circuit justice; Woods, circuit judge, and Bunn, district judge.

Messrs. Charles Quarles, T. W. Spence, and T. W. Harper, for appellants.

An injunction is an extraordinary remedy, to be resorted to only when the end sought can be reached by no other legal process.

The writs of injunction in this case, in so far as they enjoin acts forbidden by law, are superfluous and unnecessary, and they have no functions to perform; in so far as the writs forbid acts which the law does not forbid, the order awarding the writs is erroneous.

The order appointing the receivers and directing them to take possession of the road, and authorizing them to operate it, is an equitable execution.

Davis v. Gray (83 U. S., 16 Wall., 217; 21 L. ed., 452).

Any interference with the possession of the receivers, or with the operation of the road, is an obstruction to the execution of the mandate of the court.

Secor v. Toledo (P. & W. R. Co., 7 Biss., 521; King v. Ohio & M. R. Co., 7 Biss., 532).

The employees of receivers of railroad companies are pro hac vice servants of the court, and consequently they are at all times before the court for punishment, by summary process, upon mere citation for contempt.

Re Doolittle, 23 Fed. Rep., 544; *United States v. Kane*, 23 Fed. Rep., 748; *Gluck & B. Corporate Receivers*, sec. 33.

This is true as to the world at large.

Gluck & B. Corporate Receivers, sec. 33 and cases.

The remedy for interference is a simple citation to show cause, which would bring the guilty persons before the court.

Re Doolittle and *United States v. Kane*, supra; *Re Higgins*, 27 Fed. Rep., 443.

If two equal rights conflict, it does not and can not rest with any court to declare which of these shall give way.

No court can subordinate the right of the laborer to the right of the employer, nor can any court declare that capital shall abate any of its rights because of collision with the rights of the laborer.

The assertion of a right can not be called the "exercise of unbridled will," and liberty can not be opprobriously stamped as license merely because the exercise of his right by one man works damage to another man, or to another set of men, or to society.

The right of a man to his services is the same in kind and degree as the right of a man to his property.

Whatever may be the injury that casually results to an individual from the act of another while pursuing the reasonable exercise of an established right, it is his misfortune. The law pronounces it *damnum absque injuria*, and the individual from whose act it proceeds is liable neither at law nor in the form of conscience. And the principal right necessarily carries with it also all the means essential to its exercise.

The Eleanor, 15 U. S., 2 Wheat., 345, 4 L. ed., 257.

The question presented is this, Whether, when the wages of men working under no contract are reduced by their employer on account of small profits, these men may, by concerted action, quit work in order to bring about a restoration of the old scale.

It is not logical to say that a railway is a public highway and owes a duty to the public, and that it must be kept a going concern although it prove unremunerative to the shareholders, and at the same time shift this duty, owed to the public, from the shoulders of the railroad company and its shareholders to the wage-earners, who in no event can have any interest in the profits.

The workmen are not the actors; the receivers are the aggressors; the sole reason for the change is lack of profits to the bondholders.

The judgment of the circuit court is, not that the men must not breach a contract, but that they are obligated to enter into a new contract.

A tort springs out of a contract when there is a breach of a duty which the law, contradistinguished from the contract, has imposed.

Bishop, Non-Cont. L., § 73.

Where contract relations exist, the parties assume toward each other no duties whatever besides those the contract implies.

Cooley, Torts, p. 91.

The class of tortious actions arising out of contract do not arise from a breach of express provisions thereof; but from a breach of an implied duty arising out of and incident to the contract, "and the liability arises out of a duty incident to and created by the contract" of employment, but only dependent upon the contract to the extent necessary to raise the duty. The tort consists in the breach of the duty.

Wood's Addison, Torts, § 27, note.

The terms of the contract, therefore, do not define the duty and can not be resorted to for that purpose.

The duty spoken of is not to perform the contract, but to do or refrain from doing something which the law says shall or shall not be done by a man who has entered into a certain contract relation.

The question for the court in this case is where this duty of a railroad employee begins and ends.

One of these implied conditions on their behalf was that they would not leave its service or refuse to perform their duties under circumstances, when such neglect on their part would imperil lives committed to its care, or the destruction of property involving irreparable loss and injury, or visit upon it severe penalties.

Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 19 L. R. A., 395, 54 Fed. Rep., 746.

It is idle to say that a man has a right to quit, and yet that the law prohibits him from quitting so as to interfere with the convenience of his employer.

In the absence of restrictive contract, workmen have a right, by concerted action, to cease work to procure better terms of service, no compulsion being used except that incident to the cessation.

A conspiracy is generally defined, "the combination or agreement of two or more persons to do an act unlawful in itself, or to do a lawful act by unlawful means."

Anderson, Law Dict., title Conspiracy.

The case of *Com. v. Carlisle*, Brightly, 36, which was mainly relied upon by counsel for the receivers below, is pronounced by the United States circuit court of appeals, 8th circuit, to be "a case of questionable authority."

United States v. Trans-Missouri Freight Assn., 24 L. R. A., 73, 58 Fed. Rep., 58, and the cases holding contrary to its doctrine, viz: *Snow v. Wheeler*, 113 Mass., 179; *Bowen v. Matheson*, 14 Allen, 499; *Skrainka v. Scharringhausen*, 8 Mo. App., 522; *Carew v. Rutherford*, 106 Mass., 1, 8 Am. Rep., 287, are approved.

Where a confederacy having no lawful aim tends simply to oppression of individuals or to the prejudice of the public, it will be a conspiracy. But where the aim is lawful, and the means are lawful, the combination will not be a conspiracy, even though inconvenience, discomfort, or prejudice ensue to individuals or to the public.

State v. Donaldson, 32 N. J. L., 151, 90 Am. Dec., 649; *Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co.*, 19 L. R. A., 387, 54 Fed. Rep., 738.

Every definition of conspiracy includes and bases it upon a tort.

Adler v. Fenton, 65 U. S., 24 How., 407, 16 L. ed., 696.

Before this court can restrain an act the law must have condemned it.

Wheaton v. Peters, 33 U. S. 8 Pet. 591, 8 L. ed., 1055.

Under the common law, since the abrogation of, or departure from, the old English statutes, which made it a criminal offense for an individual to refuse to work, combinations of workmen for the purpose of improving their condition, increasing their earning power, and enforcing the payment of higher wages by combination, have been held innocent.

Carew v. Rutherford, 106 Mass., 1, 8 Am. Rep., 287; *Snow v. Wheeler*, 113 Mass., 186; *State v. Stewart*, 59 Vt., 285, 59 Am. Rep., 710; *Com. v. Hunt*, 4 Met., 134.

The best American authorities to-day concur in placing labor and capital on the same plane.

State v. Glidden, 55 Conn., 74; *Curran v. Galen*, 2 Misc., 553; *Rogers v. Evarts*, 17 N. Y. Supp., 264; *State v. Stewart*, 59 Vt., 289, 59 Am. Rep., 710.

The right of employees to quit work singly, and the right of employees to quit work in a body, has been and is to-day recognized and affirmed by the Federal courts.

Re Doolittle, 23 Fed. Rep., 547; *United States v. Kane*, Id., 748; *Cœur d'Alene Consol. & Min. Co. v. Miners' Union of Wardner*, 19 L. R. A., 382, 51 Fed. Rep., 263; *King v. Ohio & M. R. Co.*, 7 Biss., 533; *United States v. Workingmen's Amalgamated Council, of New Orleans*, 54 Fed. Rep., 994.

The Wisconsin statute prohibits persons from combining, associating, agreeing, mutually undertaking, or concerting together for the purpose of willfully or maliciously injuring another.

The word "willfully" is ordinarily used to express something like a wicked purpose or an evil or improper motive, or to characterize an act done wantonly.

State v. Preston, 34 Wis., 675; *United States v. 3 Railroad Cars*, 1 Abb. U. S., 196.

The word "maliciously" in the penal statutes is construed as meaning a wicked intent to injure.

Tuttle v. Bishop, 30 Conn., 80; *Com. v. Walden*, 3 Cush., 558.

The United States statute prohibiting trusts does not touch the case.

United States v. Patterson, 55 Fed. Rep., 605-641; *United States v. Trans-Missouri Freight Assn.*, 24 L. R. A. 73, 58 Fed. Rep., 58.

The phraseology of the injunctive writ is correct or erroneous, according to the idea which their words conveyed to the men addressed, the words being taken in the sense in which those men had the right to construe them.

Unless there be the most decisive reasons which lead us to conjecture the intent was otherwise, words are to be understood in their proper and most known signification, not the grammatical one, which regards the etymology and original of them, but that which is vulgar and most in use; for use is the judge, the law, and rule of speech. (Lieber's *Hermeneutics*, Hammond's edition, 299.)

All the lexicographers are in accord on the meaning of the word "strike," and therefore the word "strike" in these injunctions means just what the people who coined the word have made it mean: "A combined effort of workmen to obtain higher wages or other concessions from their employers by stopping work at a preconcerted time."

If the definition given by the learned circuit judge of the word "strike" be correct, then the following sentence, found in McCarthy's *History of Our Own Times*, is rank nonsense or worse:

"Some eminent men, of whom Mr. Mill was the greatest, had long been endeavoring to get the world to recognize the fact that a strike is not a thing which can be called good or bad until we know its object and its history; that the men who strike may be sometimes right and that they may have sometimes been successful."

And the writer in the *Encyclopædia Britannica*, on the subject "Trade Unions," made a slip when he wrote that a strike was a simultaneous cessation of work to secure a concession.

Messrs. James McNaugh, John C. Spooner, and George P. Miller for appellees.

HARLAN, J., delivered the opinion of the court:

The questions before us relate to the power of a court of equity—having custody by receivers of the railroad and other property of a corporation—to enjoin combinations, conspiracies, or acts on the part of the receivers' employees and their associates in labor organizations which, if not restrained, would do irreparable mischief to such property and prevent the receivers from discharging the duties imposed by law upon the corporation.

The original bill was filed on behalf of stockholders and creditors of the Northern Pacific Railroad Company, a corporation created by an act of Congress, and had for its general object the administration under the direction of the court of the entire railroad system, lands, and assets of that corporation, and the enforcement of the respective rights, liens, and equities of its preferred and common stockholders, bondholders, and creditors.

The railroad company having filed its answer, receivers were appointed with authority to take immediate possession of its railroads and other property and to exercise its authority and franchises, conduct its business and occupation as a carrier of passengers and freight, discharge the public duties obligatory upon it or upon any of the corporations whose lines of road were in its possession, preserve the property in proper condition and repair so as to be safely and advantageously used, protect the title and possession of the same, and employ such persons and make such payments and disbursements as were needful. The receivers were also authorized to manage all other property of the company at their discretion and in such manner as in their judgment would produce the most satisfactory results consistent with the discharge of the public duties imposed on them, and to fix the compensation of officers, attorneys, managers, superintendents, agents, and employees in their service. It was further ordered that an injunction issue against the defendant and all claiming to act by, through, or under it, and against all other persons, to restrain them from interfering with the receivers in taking possession of and managing the property.

Subsequently the Farmers' Loan and Trust Company, as trustee for the holders of bonds and collateral trust indentures, filed an original bill in the same court against the Northern Pacific Railroad Company, the individual plaintiffs in the first suit, and the receivers. The relief asked was that the plaintiff as trustee under the mortgages named in the bill be placed in possession of the mortgaged premises, or that receivers of the rights, franchises, and property of the railroad company be appointed with authority to operate its railroads and carry on its business under the protection of the court; that the liens created by the several mortgages be ascertained and declared; and that the mortgaged property, in certain contingencies, be sold and the proceeds applied according to the rights of parties.

The railroad company having appeared in that suit, an order was entered appointing the same persons receivers who were appointed in the first suit, and the two suits were consolidated, to proceed together under the title of the Farmers' Loan and Trust Co. v. Northern Pacific Railroad Company, etc.

By a writ of injunction dated December 19, 1893, the officers, agents, and employees

of the receivers, including engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all persons, associations, and combinations, voluntary or otherwise, whether in the service of the receivers or not, were enjoined—

From disabling or rendering in any wise unfit for convenient and immediate use any engine, cars, or other property of the receivers;

From interfering in any manner with the possession of locomotives, cars, or property of the receivers or in their custody;

From interfering in any manner, by force, threats, or otherwise, with men who desire to continue in the service of the receivers, or with men employed by them to take the place of those who quit;

From interfering with or obstructing in anywise the operation of the railroad or any portion thereof, or the running of engines or trains thereon as usual;

From any interference with the telegraph lines of the receivers along the lines of railways operated by them, or the operation thereof;

From combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad; and, generally,

From interfering with the officers and agents of the receivers or their employees in any manner by actual violence or by intimidation, threats, or otherwise, in the full and complete possession and management of the railroad and of all the property thereunto pertaining, and from interfering with any and all property in the custody of the receivers, whether belonging to them or to shippers or other owners, and from interfering, intimidating, or otherwise injuring or inconveniencing or delaying the passengers being transported or about to be transported over the railway of the receivers or any portion thereof, or by interfering in any manner by actual violence or threat, and otherwise preventing or endeavoring to prevent the shipment of freight or the transportation of the mails of the United States over the road operated by the receivers, until the further order of this court.

This injunction was based on a petition of the receivers, urging, in view of the general depression in the business of transportation, the necessity of reducing expenses, and representing to the court that many employees were threatening that if their compensation was diminished, as indicated in a revised schedule of wages which the receivers had adopted to take effect January 1, 1894, they would prevent or obstruct the operation of the railroads in the hands of the receivers.

A second writ of injunction was issued December 22, 1893. It was based on a supplemental petition of the receivers and was in all respects like the former one, except that it contained, in addition, a clause by which the persons and associations to whom it was addressed were enjoined—

From combining or conspiring together, or with others, either jointly or severally or as committees, or as officers of any so-called labor organization, with the design or purpose of causing a strike upon the lines of railroad operated by said receivers, and from ordering, recommending, or approving, and advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time, and from ordering, recommending, advising, or approving, by communication or instruction, or otherwise, the employees of said receivers, or any of them, or of said Northern Pacific Railroad Company, to join in a strike on said January 1, 1894, or at any other time, and from ordering, recommending, or advising any committee or committees, or class or classes of employees of said receivers, to strike or join in a strike on January 1, 1894, or at any other time, until the further order of this court.

The appellants, as chief executive officers, respectively, of the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherhood of Locomotive Firemen, the Order of Railway Telegraphers, the Brotherhood of Railway Trainmen, and the Switchmen's Mutual Aid Association, appeared in court on behalf of themselves and their respective organizations and associations, as well as on behalf of such employees of the receivers as were members of those associations and organizations or of some of them, and moved that the court modify the orders and injunctions of December 19, 1893, and December 22, 1893—

1. By striking from both writs of injunction these words: "and from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

2. By striking from the writ of injunction of December 22, 1893, the above clause or paragraph relating specially to "strikes" which was not in the writ issued December 19, 1893.

The motion was in writing and upon its face purported to be based on the petition and supplemental petitions filed by the receivers on the orders of the court made December 19 and 22, 1893, respectively, and on the above writs of injunction. Beyond the facts set out in those petitions, the only evidence adduced at the hearing of the motion was documentary in its nature, to wit, the constitutions and by-laws of the associations whose principal officers had been permitted to intervene in the cause.

The court, upon the hearing of the motion, modified the writ of injunction of December 22, 1893, by striking therefrom the above words in italics, "*and from ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time.*"

The grounds upon which these words were stricken from the second writ of injunction are thus stated in the opinion of the court:

"In fairness this clause must be read in the light of the statements of the petition. It was therein asserted to the court that the men would not strike unless ordered so to do by the executive heads of the national labor organizations; and that the men would obey such orders instead of following the direction of the court. The clause is specially directed to the chiefs of the several labor organizations. The use of the words 'order, recommend, approve, or advise' was to meet the various forms of expression under which by the constitution or by-laws of these organizations the command was cloaked, as, for instance, in the one organization the chief head 'advises' a strike; in another he 'approves' a strike; in another he 'recommends' the quitting of employment. Whatever terms may be employed the effect is the same. It is a command which may not be disregarded, under penalty of expulsion from the order and of social ostracism. This language was employed to fortify the restraints of the other portions of the writ, and to meet the various disguises under which the command is cloaked. It was so inserted out of abundant caution, that the meaning of the court might be clear; that there should be no unwarrantable interference with this property, no intimidation, no violence, no strike. It was perhaps unnecessary, being comprehended within the clause restraining the heads of these organizations from ordering, recommending, or advising a strike, or joiner in a strike.

"It is said, however, that the clause restrains an individual from friendly advice to the employees, as a body, or individually, as to their or his best interest in respect of remaining in the service of the receivers. Read in the light of the petitions upon which the injunction was founded, I do not think that such construction can be indulged by any fair and impartial mind. It might be used as a text for a declamatory address to excite the passions and prejudices of men, but could not, I think, be susceptible of such strained construction by a judicial mind. The language of a writ of injunction should, however, be clear and explicit, and, if possible, above criticism as to its meaning. Since, therefore, the language of this particular phrase may be misconceived, and the restraint intended is, in my judgment, comprehended within the other provisions of the writ, the motion in that respect will be granted and the clause stricken from the writ."

Except in the particulars mentioned in the opinion of the circuit court, the motion to modify the injunctions was denied and the injunctions continued in force. Of this action of the court the intervenors complain.

In considering the important questions presented by the record we have assumed, as did the circuit court, the truth of all the material facts set out in the petition and supplemental petition of the receivers. This is the necessary result of the intervenors having based their motion on those petitions, and on the orders of the court directing writs of injunction to be issued. As those orders were based on the petitions of the receivers, it must be taken that the intervenors, although insisting that the injunction should have been modified to the full extent indicated by their motion, concede for the purposes of the motion the facts to be as alleged in those petitions.

It is consequently to be regarded as undisputed in this cause that, at the time the writ of December 19, 1893, was issued, some of the railroad employees were giving it out and threatening that if the revised schedules and rates in question were enforced they would suddenly quit the service of the receivers; by threats, force, and violence would compel other employees to quit such service and, by organized effort and intimidation, prevent others from taking the places of those who might quit; would disable locomotives and cars so that they could not be safely used or used only after expensive repairs; would take possession of the cars, engines, shops, and roadbeds in the possession of the receivers, and otherwise prevent their being used; would so conduct themselves with regard to the property in the hands of the receivers as to hinder and embarrass them, their officers and agents, in its management and in the operation of trains, and that such dissatisfied employees, and others not in the

employ of the receivers, but cooperating with those employees from a spirit of sympathy or mischief, would, unless restrained by the order of court, have carried out their threats, with the result that the receivers would not only have been compelled to abandon the revised schedules and rates proposed to be enforced, but would have been disabled from operating the railroads in their custody, from discharging their duties to the public as carriers of passengers and freight, and from transporting the mails of the United States, bringing thereby incalculable loss upon the trust property, as well as causing inconvenience and hardship to the public, particularly to the people in that part of the country traversed by the Northern Pacific Railroad, who are dependent upon the regular, continuous operation of that road for commercial facilities of every kind, as well as for fuel, provisions, and clothing.

It will be observed that the motion of the intervenors does not question the power of the court to restrain acts upon the part of the employees or others, which would have directly interfered with the receivers' possession of the trust property or obstructed their control and management of it, as well as attempts by force, intimidation, or threats, or otherwise to molest or interfere with persons who remain in the service of the receivers or with others who were willing to take the places of those withdrawing from such service.

But it was contended that the circuit court exceeded its powers when it enjoined the employees of the receivers "from combining, conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

This clause embodies two distinct propositions: One relating to combinations and conspiracies to quit the service of the receivers, with the object and intent of crippling the property or embarrassing the operation of the railroads in their charge; the other, having no reference to combinations and conspiracies to quit or to the object and intent of any quitting, but only to employees "so quitting" as to cripple the property or to prevent or hinder the operation of the railroad.

Considering these propositions in the inverse order, we remark that the injunction against employees so quitting as to cripple the property or prevent or hinder the operation of the railroad was equivalent to a command by the court that they should remain in the active employment of the receivers and perform the services appropriate to their respective positions until they could withdraw without crippling the property or preventing or hindering the operation of the railroad. The time when they could quit without violating the injunction is not otherwise indicated by the order of the court.

Under what circumstances may the employees of the receivers of right quit the services in which they are engaged? Much of the argument of counsel was directed to this question. We shall not attempt to lay down any general rule applicable to every case that may arise between employer and employees. If an employee quits without cause and in violation of an express contract to serve for a stated time, then his quitting would not be of right, and he would be liable for any damages resulting from a breach of his agreement, and perhaps, in some states of case, to criminal prosecution for loss of life or limb by passengers or others directly resulting from abandoning his post at a time when care and watchfulness was required upon his part in the discharge of a duty he had undertaken to perform. And it may be assumed for the purposes of this discussion that he would be liable in like manner where the contract of service, by necessary implication arising out of the nature or the circumstances of the employment required him not to quit the service of his employer suddenly and without reasonable notice of his intention to do so.

But the vital question remains whether a court of equity will, under any circumstances by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States or in any place subject to their jurisdiction. Courts of equity have sometimes sought to sustain a contract for services requiring special knowledge or peculiar skill, by enjoining acts or conduct that would constitute a breach of such contract. To this class belong the cases of singers, actors, or musicians who, after agreeing for a valuable consideration to give their professional service at a named place and during a specified time for the benefit of certain parties, refused to meet their engagement and undertake to appear during the same period for the benefit of other parties at other places. (*Lumley v. Wagner*, 1 De G. M. & G., 604, 617, 5 De G. & S., 485, 16 Jur., 871; *Montague v. Flockton*, L. R. 16 Eq., 189.)

While in such cases the singer, actor, or musician has been enjoined from appearing during the period named at a place and for parties different from those specified in the first engagement, it was never supposed that the court could by injunction compel the affirmative performance of the agreement to sing, or to act, or to play. In *Powell Duffryn Steam Coal Co. v. Taff Vale R. Co.*, L. R., 9 Ch. App., 331, 335, Lord Justice James observed that when what is required is not merely to restrain a party from doing an act of wrong, but to oblige him to do some continuous act involving labor and care, the court has never found its way to do this by injunction. In the same case Lord Justice Mellish stated the principle still more broadly, perhaps too broadly, when he said that a court can only order the doing of something which has to be done once for all, so that the court can see to its being done.

The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of employees engaged to perform personal service to quit that service rests upon the same basis as the right of an employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages and a court of equity will not, indirectly or negatively by means of an injunction, restrain the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable. (*Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co.*, 54 Fed. Rep., 730, 740; 19 L. R. A., 395, Taft, J., and authorities cited; *Fry, Spec. Perf. Cont.*, 3d Am. ed. §§ 87, 91, and authorities cited.)

It is supposed that these principles are inapplicable or should not be applied in the case of employees of a railroad company which, under legislative sanction, constructs and maintains a public highway primarily for the convenience of the people, and in the regular operation of which the public are vitally interested.

Undoubtedly the simultaneous cessation of work by any considerable number of the employees of a railroad corporation without previous notice will have an injurious effect and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employees and employers, both equally indifferent to the general welfare, are to be met and remedied by legislation restraining alike employees and employers so far as necessary adequately to guard the rights of the public as involved in the existence, maintenance, and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such corporations to discharge an employee from service whenever they see fit, must be deemed so far absolute that no court of equity will compel one against his will to remain in such service or actually to perform the personal acts required in such employment or compel such managers against their will to keep particular employees in their service. It was competent for the receivers in this case, subject to the approval of the court, to adopt a schedule of wages or salaries, and say to employees: "We will pay according to this schedule, and if you are not willing to accept such wages you will be discharged."

It was competent for an employee to say: "I will not remain in your service under that schedule, and if it is to be enforced I will withdraw, leaving you to manage the property as best you may, without my assistance." In the one case, the exercise by the receivers of their right to adopt a new schedule of wages could not, at least in the case of a general employment without limit as to time, be made to depend upon considerations of hardship and inconvenience to employees. In the other, the exercise by employees of their right to quit in consequence of a proposed reduction of wages could not be made to depend upon considerations of hardship or inconvenience to those interested in the trust property or to the public. The fact that employees of railroads may quit under circumstances that would show bad faith upon their part or a reckless disregard of their contract or of the convenience and interests of both employer and the public, does not justify a departure from the general rule that equity will not compel the actual, affirmative performance of merely personal services, or (which is the same thing) require employees against their will to remain in the personal service of their employer.

The result of these views is that the court below should have eliminated from the writ of injunction the words "and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

But different considerations must control in respect to the words in the same paragraph of the writs of injunction, "and from combining and conspiring to quit, with

or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad." We have said that if employees were unwilling to remain in the service of the receivers for the compensation prescribed for them by the revised schedules, it was the right of each one on that account to withdraw from such service. It was equally their right, without reference to the effect upon the property or upon the operation of the road, to confer with each other upon the subject of the proposed reduction in wages and to withdraw in a body from the service of the receivers because of the proposed change. Indeed, their right as a body of employees affected by the proposed reduction of wages to demand given rates of compensation as a condition of their remaining in the service was as absolute and perfect as was the right of the receivers representing the aggregation of persons, creditors, and stockholders interested in the trust property, and the general public, to fix the rates they were willing to pay their respective employees.

But that is a very different matter from a combination and conspiracy among employees, with the object and intent not simply of quitting the service of the receivers because of the reduction of wages, but of crippling the property in their hands and embarrassing the operation of the railroad. When the order for the original injunction was applied for it was represented—and the intervenors admit by their motion that it was correctly represented—that unless the restraining power of the court was exerted the dissatisfied employees and others cooperating with them would physically disable and render unfit for use the cars and other property in the possession of the receivers, and by force, threats, and intimidation used against employees remaining in their service and against those desiring to take the places of those quitting, would prevent the receivers from operating the roads in their custody and from discharging the duties which they owed on behalf of the corporation to the parties interested in the trust property, to the Government, and to the public.

The general inhibition upon combinations and conspiracies formed with the object and intent of crippling the property and embarrassing the operation of the railroad, must be construed as referring only to acts of violence, intimidation, and wrong of the same nature or class as those specifically described in the previous clauses of the writ. We do not interpret the words last above quoted as embracing the case of employees who, being dissatisfied with the proposed reduction of their wages, merely withdraw on that account, singly or by concerted action, from the service of the receivers, using neither force, threats, persecution, nor intimidation toward employees who do not join them, nor any device to molest, hinder, alarm, or interfere with others who take or desire to take their places. We use the word "device" here as applicable to cases like that of *Sherry v. Perkins*, 147 Mass., 212, in which it appeared that parties belonging to a labor organization displayed and maintained certain banners in front of the plaintiff's place of business for the purpose of deterring workmen from remaining in or entering his service. As the acts complained of were injurious to the plaintiff's business and were a nuisance, it was held that they could be reached and restrained by injunction.

So in *Springhead Spinning Co. v. Riley*, L. R., 6 Eq., 551, equity interfered by injunction to restrain the conduct of parties, officers of a trades union, who gave notice to workmen by means of placards and advertisements that they were not to hire themselves to the plaintiff pending a dispute between the union and the plaintiff. (See also *United States v. Kane*, 23 Fed. Rep., 748; *Emack v. Kane*, 34 Fed. Rep., 46; *Casey v. Cincinnati Typographical Union*, No. 3, 45 Fed. Rep., 135, 12 L. R. A., 193; *Walker v. Cronin*, 107 Mass., 555.)

These employees having taken service first with the company and afterwards with the receivers under a general contract of employment which did not limit the exercise of the right to quit the service, their peaceable cooperation, as the result of friendly argument, persuasion, or conference among themselves, in asserting the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal or criminal, although they may have so acted in the firm belief and expectation that a simultaneous quitting without notice would temporarily inconvenience the receivers and the public.

If in good faith and peaceably they exercise their right of quitting the service, intending thereby only to better their condition by securing such wages as they deem just, but not to injure or interfere with the free action of others, they can not be legally charged with any loss to the trust property resulting from their cessation of work in consequence of the refusal of the receivers to accede to the terms upon which they were willing to remain in the service. Such a loss, under the circumstances stated, would be incidental to the situation and could not be attributed to employees exercising lawful rights in orderly ways or to the receivers when in good faith and in fidelity to their trust they declare a reduction of wages and thereby cause dissatisfaction among employees and their withdrawal from service.

The combinations or conspiracies which the law does not tolerate are of a different character. According to the principles of the common law, a conspiracy upon the part of two or more persons with the intent by their combined power to wrong others or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in execution of such conspiracy. This is fundamental in our jurisprudence. So a combination or conspiracy to procure an employee or body of employees to quit service in violation of the contract of service would be unlawful, and in a proper case might be enjoined if the injury threatened would be irremediable at law.

It is one thing for a single individual or for several individuals each acting upon his own responsibility and not in cooperation with others, to form the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing in the eye of the law for many persons to combine or conspire together with the intent not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others or the public. An intent upon the part of a single person to injure the rights of others or of the public, is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent, and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal.

The general principle is illustrated in *Callan v. Wilson* (127 U. S., 540, 555; 32 L. ed., 223, 228). That was an information in the police court of the District of Columbia charging the defendants Callan and others with a conspiracy to prevent certain named persons who had been expelled from a local association, a branch of a larger one known as the Knights of Labor of America, from pursuing their calling of musicians anywhere in the United States. This result, the information charged, was to be effected by the defendants refusing to work as musicians or in any other capacity with the persons so named, or with or for any person, firm, or corporation working with or employing them, by procuring all other members of those organizations, and all other workmen and tradesmen, not to work in any capacity with or for them or either of them or for any firm or corporation that employed either of them; and by warning and threatening every person, firm, or corporation employing such obnoxious persons that if they did not forthwith cease to employ and refuse to employ them, they should not receive the custom or patronage either of the persons so conspiring or of other members of said organizations. The question in the case was whether the accused were entitled to a trial by jury or whether the offense charged was of the class called "petty," for the trial of which a defendant could not at common law claim, of right, a jury. The court held that the offense charged was not a petty or trivial one, but one of a grave character, affecting the public at large, and for the trial of which a jury was therefore demandable as of right.

Among the authorities cited in that case were *Com. v. Hunt* (4 Met., 111, 121; 38 Am. Dec., 346), in which it was said that "the general rule of the common law is that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal to the injury of the public or portions or classes of the community, or even to the rights of an individual; *State v. Burnham* (15 N. H., 396, 401), where it was held that "combinations against law or against individuals are always dangerous to the public peace and to public security; to guard against the union of individuals to effect an unlawful design is not easy, and to detect and punish them is often extremely difficult;" and *Reg. v. Parnell* (14 Cox, C. C., 508), where the court observed, that "an agreement to effect an injury or wrong to another by two or more persons is constituted an offense, because the wrong to be effected by a combination assumes a formidable character; when done by one alone it is but a civil injury, but it assumes a formidable or aggravated character when it is to be effected by the powers of a combination."

One of the cases cited in *Callan v. Wilson* is *Com. v. Carlise, Bright*, (Pa.), 36, 39, 40, in which Mr. Justice Gibson considered the law of conspiracy with care, and among other things said: "There is between the different parts of the body politic a reciprocity of action on each other, which, like the action of antagonizing muscles in the natural body, not only prescribes to each its appropriate state and action, but regulates the motion of the whole. The effort of an individual to disturb this equilibrium can never be perceptible, nor carry the operation of his interest or that of any other individual beyond the limits of fair competition; but the increase of power by combination of means, being in geometrical proportion to the number concerned, an association may be able to give an impulse, not only oppressive to individuals, but mischievous to the public at large; and it is the employment of an engine so powerful and dangerous that gives criminality to an act that would be perfectly innocent, at least in a legal view, when done by an individual."

There are many other adjudged cases to the same effect. In *State v. Stewart* (50 Vt., 273, 286; 59 Am. Rep., 710), it was held after an extended review of the authorities that "a combination of two or more persons to effect an illegal purpose, either by legal or illegal means, whether such purpose be illegal at common law or by statute, or to effect a legal purpose by illegal means, whether such means be illegal at common law or by statute, is a common-law conspiracy. Such combinations are equally illegal whether they promote objects or adopt means that are per se indictable, or promote objects or adopt means that are per se oppressive, immoral, or wrongfully prejudicial to the rights of others. If they seek to restrain trade, or tend to the destruction of the material property of the country, they work injury to the whole people." In *State v. Buchanan* (5 Harr. & J., 317, 352, 355; 9 Am. Dec., 534), the court of appeals of Maryland adjudged that "every conspiracy to do an unlawful act, or to do a lawful act for an illegal, fraudulent, malicious, or corrupt purpose, or for a purpose which has a tendency to prejudice the public in general, is at common law an indictable offense, though nothing be done in execution of it, and no matter by what means the conspiracy was intended to be effected, which may be perfectly indifferent, and makes no ingredient of the crime, and, therefore, need not be stated in the indictment."

Again: "There is nothing in the objection that to punish a conspiracy where the end is not accomplished would be to punish a mere unexecuted intention. It is not the bare intention that the law punishes, but the act of conspiring, which is made a substantive offense by the nature of the object to be effected." In *State v. Glidden*, 55 Conn., 46, the court said: "Any one man, or any one of several men acting independently, is powerless; but when several combine and direct their united energies to the accomplishment of a bad purpose, the combination is formidable. Its power for evil increases as its number increases. * * * The combination becomes dangerous and subversive of the rights of others, and the law wisely says that it is a crime." In *Reg. v. Kenrick* (5 Q. B., 49), Chief Justice Denman said that by the law of conspiracy as it had been administered for at least the previous hundred years any combination to prejudice another unlawfully was considered as constituting the offense, and that the offense consisted in the conspiracy and not in the acts committed for carrying it into effect.

See also *Carew v. Rutherford* (106 Mass., 1; 8 Am. Rep., 287); *Old Dominion S. S. Co. v. McKenna* (30 Fed. Rep., 48); *Cœur d'Alene Consol. & Min. Co. v. Miners' Union of Wardner* (51 Fed. Rep., 260, 267; 19 L. R. A., 382; 3 Whart. Crim. L., 8th ed., §§ 1337 et seq.; 2 Archbold, Cr. Pr. & Pl. Pomeroy's ed., 1830, note; 2 Bishop, Crim. L., §§ 180 et seq.)

It seems entirely clear upon authority that any combination or conspiracy upon the part of these employees would be illegal which has for its object to cripple the property in the hands of the receivers and to embarrass the operation of the railroads under their management, either by disabling or rendering unfit for use engines, cars, or other property in their hands, or by interfering with their possession, or by actually obstructing their control and management of the property, or by using force, intimidation, threats, or other wrongful methods against the receivers or their agents or against employees remaining in their service, or by using like methods to cause employees to quit or prevent or deter others from entering the service in place of those leaving it. Combinations of that character disturb the peace of society and are mischievous in the extreme. They imperil the interests of the public, which may rightfully demand that the free course of trade shall not be unreasonably obstructed. They endanger the personal security and the personal liberty of individuals who, in the exercise of their inalienable privilege of choosing the terms upon which they will labor, enter or attempt to enter the service of those against whom such combinations are specially aimed.

And as acts of the character referred to would have defeated a proper administration of the trust estate and inflicted irreparable injury upon it, as well as prejudiced the rights of the public, the circuit court properly framed its injunction so as to restrain all such acts as are specifically mentioned, as well as combinations and conspiracies having the object and intent of physically injuring the property or of actually interfering with the regular, continuous operation of the railroad by the receivers.

Some reference was made in argument to the act of Congress of June 29, 1886, legalizing the incorporation of national trades unions (24 Stat. L., 86, chap. 567). It is not perceived that this reference is at all pertinent to the present discussion. That act does not in any degree sanction illegal combinations. It recognizes the legal character of any association of working people having two or more branches in the States or Territories of the United States and established "for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages

and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit."

Associations of that character are authorized to make and establish such constitutions, rules, and by-laws as they deem proper to carry out their lawful objects. Those objects as defined by Congress are most praiseworthy, and should be sustained by the courts whenever their power to that end is properly invoked. What we have said about illegal combinations has no reference to such associations, but only to combinations formed with the intent to employ force, intimidation, threats, or other wrongful methods whereby the public will be injured, or whereby will be impaired the absolute right of individuals, whether belonging to such combinations or not, to dispose of their labor or property upon such terms as to them seems best.

The principle that a combination or conspiracy of two or more persons to injure the rights of others is illegal, although nothing may have been done in execution of that intent, has been embodied in the statutes of Wisconsin, in which State the present cause is pending. By an act passed April 2, 1887, it was declared that "any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be punishable by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars." And by a subsequent act, passed April 25, 1887, it was declared that "any two or more employers who shall agree, combine, and confederate together for the purpose of interfering with or preventing any person or persons seeking employment, either by threats, promises, or by circulating or causing the circulation of a so-called black list, or by any means whatsoever, or for the purpose of procuring and causing the discharge of an employee or employees, by any means whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for a period of not more than one year, or by a fine of not less than fifty dollars, or by both." (1 Wis. Laws 387, pp. 299, 380, chaps. 287, 349; 2 Wis. Rev. Stat., sects. 446a, 446b.)

This legislation was followed by an act published May 3, 1887, providing: "Sec. 1. Any person who by threats, intimidation, force, or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage-worker, or who shall attempt to so hinder or prevent, shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment in the discretion of the court. Sec. 2. Any person who shall, individually or in association with one or more others, willfully break, injure, or remove any part or parts of any railway car or locomotive, or any other portable vehicle or traction engine, or any part or parts of any stationary engine, machine, implement, or machinery, for the purpose of destroying such locomotive, engines, car, vehicle, implement, or machinery, or of preventing the useful operation thereof, or who shall in any other way willfully or maliciously interfere with or prevent the running or operation of any locomotive, engine, or machinery, shall be punished by fine not exceeding one thousand dollars or by imprisonment in the county jail or the State prison not exceeding two years, or by both fine and imprisonment in the discretion of the court." (1 Wis. Laws, chap. 427, p. 462.)

It thus appears that combinations and conspiracies by two or more persons with the intent to injure the rights of others were illegal at common law and are public offenses in the State where this cause is pending.

For the reasons stated, we are of opinion that the circuit court properly refused to strike from the writs of injunction the words, "And from combining and conspiring to quit with or without notice the service of said receivers with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad."

We come next to that clause in the writ of injunction of December 22, 1893, expressly relating to "strikes."

What is to be deemed a strike within the meaning of the order of the circuit court? In the opinion of the circuit judge, made a part of the record, we are informed that the argument below the definition proffered to the court by the intervenors as one recognized by the labor organizations of the country was as follows: "A strike is a concerted cessation of or refusal to work until or unless certain conditions which obtain or are incident to the terms of employment are changed. The employee

declines to longer work, knowing full well that the employer may immediately employ another to fill his place; also knowing that he may or may not be reemployed or returned to service. The employer has the option of acceding to the demand and returning the old employee to service, of employing new men, or of forcing conditions under which the old men are glad to return to service under the old conditions."

The learned circuit judge said that a more exact definition of a strike was "a combined effort among workmen to compel the master to the concession of a certain demand by preventing the conduct of his business until compliance with the demand." And he said: "It is idle to talk of a peaceful strike. None such ever occurred. The suggestion is an impeachment of intelligence. All combinations to interfere with perfect freedom in the proper management of one's lawful business, to dictate the terms upon which such business shall be conducted, by means of threats or by interference with property or traffic, or with the lawful employment of others, are within the condemnation of the law. It has been well said that the wit of man could not devise a legal strike, because compulsion is the leading idea of it. A strike is essentially a conspiracy to extort by violence; the means employed to effect the end being not only the cessation of labor by the conspirators, but by the necessary prevention of labor by those who are willing to assume their places, and, as a last resort, and in many instances an essential element of success, the disabling and destruction of the property of the master; and so, by intimidation and by the compulsion of force to accomplish the end designed."

Under this view of the nature and object of strikes the injunction was directed, generally against combinations and conspiracies upon the part of employees with the design or purpose of causing a "strike" on the lines of railroads operated by the receivers, against the ordering, recommending, advising, approving the employees to join in a "strike," and against the ordering, recommending, or advising any committee or class of employees to "strike" or to join in a "strike."

If the word "strike" means in law what the circuit court held it to mean, the order of injunction, so far as it relates to "strikes," is not liable to objection as being in excess of the power of a court of equity. Indeed, upon the facts presented by the receivers and admitted by the motion of the intervenors, it was made the duty of the court to exert its utmost authority to protect both the property in its charge and the interests of the public against all strikes of the character described in the opinion of the circuit judge.

But in our judgment the injunction was not sufficiently specific in respect to strikes. We are not prepared, in the absence of evidence, to hold as matter of law that a combination among employees having for its object their orderly withdrawal in large numbers or in a body from the service of their employers, on account simply of a reduction in their wages, is not a strike within the meaning of that word as commonly used. Such a withdrawal, although amounting to a strike, is not, as we have already said, either illegal or criminal. In *Farrer v. Close* (L. R. 4 Q. B., 602, 612), Sir James Hannen, afterwards lord of appeal in ordinary, said: "I am, however, of opinion that strikes are not necessarily illegal. A strike is properly defined as 'a simultaneous cessation of work on the part of the workmen,' and its legality or illegality must depend on the means by which it is enforced and on its objects. It may be criminal, as if it be a part of a combination for the purpose of injuring or molesting either masters or men; or it may be simply illegal, as if it be the result of an agreement depriving those engaged in it of their liberty of action, similar to that by which the employers bound themselves in the case of *Hilton v. Eckersley* (6 El. & Bl., 47, 86); or it may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfillment of an engagement entered into between employers and employees, or any other lawful purpose."

In our opinion the order should describe more distinctly than it does the strikes which the injunction was intended to restrain. That employees and their associates may not unwittingly place themselves in antagonism to the court's authority and become subject to fine and imprisonment as for contempt, the order should indicate more clearly than has been done that the strikes intended to be restrained were those designed to physically cripple the trust property, or to actually obstruct the receivers in the operation of the road or to interfere with their employees who do not wish to quit, or to prevent by intimidation or other wrongful modes, or by any device, the employment of others to take the places of those quitting, and not such as were the result of the exercise by employees in peaceable ways of rights clearly belonging to them and were not designed to embarrass or injure others or to interfere with the actual possession and management of the property by the receivers.

In our consideration of this case we have not overlooked the observations of counsel in respect to the use of special injunctions to prevent wrongs which, if committed,

may be otherwise reached by the courts. It is quite true that this part of the jurisdiction of a court of equity should be exercised with extreme caution and only in clear cases. (*Brown v. Newell*, 2 Myl. and C., 558, 570.) Mr. Justice Baldwin, in *Bonaorte v. Camden and A. R. Co.*, 1 Baldw., 205, 217, properly said: "There is no power to exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or is more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity that never ought to be extended, unless in cases of great injury where courts of law can not afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction; that that will not be awarded in doubtful cases or new ones not coming within well-established principles; for if it issues erroneously an irreparable injury is inflicted, for which there can be no redress, it being the act of a court, not of the party who sues for it.

"It will be refused till the court are satisfied that the case before them is of a right not to be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act; in such a case the court owes it to its own suitors and its own principles to administer the only remedy the law allows to prevent the commission of the act." The authorities all agree that a court of equity should not hesitate to exercise this power when the circumstances of the particular case in hand require it to be done in order to protect rights of property against irreparable damage by wrongdoers. As Justice Story said, because of the varying circumstances of cases, "that courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases in which such injunctions shall be granted or withheld." "And," the author proceeds, "there is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs. The jurisdiction of these courts, thus exercising by special injunction, is manifestly indispensable for the purposes of social justice in a great variety of cases, and therefore should be fostered and upheld by a ready confidence." (*Story, Eq. Jur.*, sec. 959b.)

In using a special injunction to protect the property in the custody of the receivers against threatened acts which it is admitted would, if not restrained, have been committed and would have inflicted irreparable loss upon that property and seriously ejudiced the interest of the public as involved in the regular, continuous operation of the Northern Pacific Railroad, the circuit court (except in the particulars indicated) did not restrain any act which upon the facts admitted by the motion it was not its plain duty to restrain. No other remedy was full, adequate, and complete for the protection of the trust property, and for the preservation of the rights of individual suitors and of the public in his due and orderly administration by the court's receivers. "It is not enough," the court said in *Boyce v. Bundy*, 28 U. S., 3 Pet., 210, 7 L. ed., 655, "that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity." And the application of the rule that equity will not interfere where there is an adequate remedy at law must depend upon the circumstances of each case as it arises. *Watson v.therland*, 72 U. S., 5 Wall, 74, 79, 18 L. ed., 580, 582. That some of the acts enjoined could have been criminal, subjecting the wrongdoers to actions for damages or to criminal prosecution, does not, therefore, in itself determine the question as to interference by injunction. If the acts stopped at crime or involved merely crime, or if the injury threatened could, if done, be adequately compensated in damages, equity could not interfere.

But as the acts threatened involved irreparable injury to and destruction of property for all the purposes for which that property was adapted, as well as continuous acts of trespass, to say nothing of the rights of the public, the remedy at law would have been inadequate. "Formerly," Mr. Justice Story says, "courts of equity were extremely reluctant to interfere at all, even in regard to cases of repeated trespasses. At now there is not the slightest hesitation if the acts done or threatened to be done to the property would be ruinous or irreparable or would impair the just enjoyment of the property in future. If, indeed, courts of equity did not interfere in cases of this sort, there would (as has been truly said) be a great failure of justice in this country." (2 *Story, Eq. Jur.*, § 928.) So, in respect to acts which constitute a nuisance, injurious to property, if "the injury is of so material a nature that it can not be well or fully compensated for the recovery of damages, or be such from its continuance or permanent mischief might occasion a constantly recurring grievance, a foundation is laid for the interference of the court by way of injunction." (*Kerr, Inj.*, 1666, chap. 64, and authorities there cited.) This jurisdiction, the author says, was formerly exercised sparingly and with caution, "but it is now fully

established, and will be exercised as freely as in other cases in which the aid of the court is sought for the purpose of protecting legal rights from violation."

In the course of the argument some reference was made to the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." It is not necessary in this case to decide whether, within the meaning of that statute, the acts and combinations against which the injunction was aimed would have been in restraint of trade or commerce among the several States. This case was not based upon that act. The questions now before the court have been determined without reference to the above act and upon the general principles that control the exercise of jurisdiction by courts of equity.

For the reasons we have stated the order complained of is reversed in part and the cause is remanded with directions to sustain the motion to strike out and modify the injunction to the extent indicated in this opinion.

United States circuit court, eastern district of Wisconsin.

FARMERS' LOAN AND TRUST CO. v. NORTHERN PACIFIC R. R. CO. ET AL.

(60 Fed. Rep., 803.)

1. An injunction is the appropriate remedy to prevent an unlawful combination and conspiracy to interfere with the operation of a railway and paralyze its business, since the injury would be irreparable and compensation could be obtained only through a multiplicity of suits.
2. Punishment for contempt is not such a remedy for a conspiracy to obstruct the business of a railroad in the hands of a receiver as to prevent the remedy of injunction.
3. A combination and conspiracy of the employees of a receiver of a railroad company to quit the service with the object and intent of crippling the property and preventing or hindering the operation of the road is illegal, since it involves the intimidation and oppression of others and the injury to property in their keeping tending to the prejudice of the public.
4. A combination or conspiracy having for its purpose the inauguration of a strike upon the lines of a railway operated by receivers is unlawful, and may be prevented by injunction.

(April 6, 1891.)

Motion by intervening petitioners to strike out certain portions of the injunction which had been granted to receivers in possession of the Northern Pacific Railroad to restrain a strike which was threatened by the employees of the road. Motion denied except as to one clause of the injunction.

The facts sufficiently appear in the opinion.

JENKINS, circuit judge, delivered the following opinion:

On the 19th day of December, 1893, the receivers of the defendant company presented to the court their verified petition representing that on the 17th day of August, 1893, and within two days after their appointment, and in view of the insolvent condition of the railroad company, they ordered a reduction varying from 10 to 20 per cent in the salaries of all employees (including the general manager and other general officers of the company) amounting to \$1,200 per annum or more, which reduction was acquiesced in by the employees to whom the same applied. On the 25th of August, 1893, in view of the increasing depression in the transportation business, the consequent falling off of earnings, and the necessity of greater retrenchment in operating expenses, the receivers ordered a further reduction in salaries and wages of employees, amounting to 5 per cent on all salaries aggregating \$50 a month and under \$75, and to 10 per cent on all salaries aggregating from \$75 to \$100 per month. This latter order was to take effect immediately, but upon consideration its operation was suspended by the receivers until the entire subject of salaries and wages could be more fully considered, especially with reference to certain schedules covering the pay and employment of certain classes of employees.

The receivers informed the court that some of these schedules, which had been in existence for many years, were not justified by conditions now existing; that they had been amended from time to time, and extended so that they had become voluminous, and in some respects obscure, and had produced in operation inequalities and results unjust to the property, and unjust to many employees; that they thereupon revised and rearranged the schedules, and, instead of putting into operation the reduction contemplated by the order of August 25, they determined and ordered on the 28th of October, 1893 (giving general notice thereof to the employees of the road), that all

existing schedules covering the rates of pay of employees should, on the 1st of January then next ensuing, be abrogated, and that certain new schedules prepared by them should take effect on that day; and the general manager was instructed on and after that day to reduce all salaries and wages aggregating \$50 per month and less than \$75 per month 5 per cent, and all salaries and wages aggregating \$75 per month 10 per cent. The revised schedules corrected supposed inequalities between the different classes of employees, and did away with certain obnoxious regulations which were supposed to militate against the proper management of the property. The receivers further represented to the court that the reduction made in salaries and wages was justified in view of the large shrinkage of business growing out of the financial revulsion throughout the country; that the rates of compensation provided for were fair and just to the employees to whom they related, in view of the then present conditions. It was made to appear to the court that the gross earnings of the property during the year 1893 were continuing to greatly decrease; that the decrease for the month of September, 1893, as compared with the month of September, 1892, amounted to \$753,000; that the decrease for the month of December, 1893, as compared with the month of December, 1892, would amount to \$730,000; decreasing by more than one-half the entire estimated gross earnings for the month.

That by the revised schedules the average reduction in the rates of compensation to the various classes of employees was about as follows: Engineers, 8 per cent; firemen, 7 per cent; trainmen and freight conductors, 8 per cent; passenger conductors, 10 per cent; telegraphers, 5 per cent. The receivers further advised the court that many of their employees claimed that the schedules and rates in force when the receivers took possession constituted contracts between the several employees and the receivers, terminable only by the consent of the employees, in which view the receivers could not concur; and that discontent and opposition to the enforcement of the schedule were rife among the employees, based upon the assumption that no power existed in the receivers to change the schedule. The receivers further advised the court that some of the employees threatened that, in the event that the revised schedules should be put into operation, they would suddenly quit the service of the receivers, and would compel by threats and force and violence other employees to quit the service; that they would prevent, by an organized effort and by force and intimidation, others from taking service under the receivers in the place of those who might leave such service; and that they would thereby, as the means of forcing the receivers to abandon the proposed revised schedules, disable the receivers from operating the road and from discharging their duty to the public as a common carrier.

The receivers further represented to the court that some of the employees threatened if the revised schedules should be put in operation to disable locomotives and cars so that the same could not be safely used at all without expensive repairs; that they would take possession of the cars, engines, shops, roadbed, and other property in possession of the receivers, and that they would destroy and prevent the use of the property, and would so conduct themselves with regard thereto as to hinder and embarrass the receivers in the management of the property, in the operation of the trains thereover, and would bring about incalculable loss to the trust property and inflict great inconvenience and hardship upon the public. The receivers further represented to the court that unless the parties were restrained by order of the court they would carry out such threats and the receivers would be prevented from operating the road, from carrying the mails of the United States thereover, from performing the duties of a common carrier thereon, and that great loss of property and jeopardy of life would ensue; that the parties referred to (whose names the receivers were unable to state) were contriving secretly to perpetrate the acts of violence and wrong described, and to interfere with the possession and operation by the court, through the receivers, of the property; that such combination included not only dissatisfied employees of the receivers, but others not in the service of the receivers, who, from a spirit of sympathy or mischief, threaten to join the employees in perpetrating the wrongful acts and things stated, and that they would so do unless restrained by the court. The receivers thereupon asked, among other things, for an order authorizing them to put in operation and maintain on and after January 1, then proximo, the revised schedules in such petition described, and that a writ of injunction might issue as prayed for in the petition.

Upon consideration of the petition the court on that day entered its order authorizing the receivers to adopt the revised schedules and directing the issue of a writ of injunction as prayed for in the petition and directing its delivery to the marshal for execution, ordering him to protect the receivers of the Northern Pacific Railroad in their possession of the property of the railroad and in their operation thereof, and directing the receivers to file, in the courts wherein they had been appointed receivers of said property upon ancillary bills, petitions similar to that on which the

order was based, to the end that the power of each court might be seasonably invoked for the protection of the receivers in the possession and management of the property within its territorial jurisdiction. The writ in question was directed to the officers, agents, and employees of the receivers—engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all other employees of the receivers, and to all persons, associations, and combinations, voluntary or otherwise, whether employees of said receivers or not, and to all persons generally. The restraining clause of the writ is as follows:

"Now, therefore, in consideration thereof, and of the matters in said petition set forth, you, the officers, agents, and employees of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and the engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all other employees of said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and each and every one of you, and all persons, associations, and combinations, voluntary or otherwise, whether employees of said receivers or not, and all persons generally, and each and every one of you, in the penalty which may ensue, are hereby charged and commanded that you, and each and every one of you, do absolutely desist and refrain from disabling or rendering in anywise unfit for convenient and immediate use any engines, cars, or other property of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse as receivers for the Northern Pacific Railroad Company, and from interfering in any manner with the possession of locomotives, cars, or property of the said receivers, or in their custody, and from interfering in any manner, by force, threats, or otherwise, with men who desire to continue in the service of the said receivers, and from interfering in any manner, by force, threats, or otherwise, with men employed by the said receivers to take the place of those who quit the service of said receivers, or from interfering with or obstructing in anywise the operation of the railroad, or any portion thereof, or the running of engines and trains thereon and thereover, as usual, and from any interference with the telegraph lines of said receivers or along the lines of railways operated by said receivers, or the operation thereof, and from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property, or to prevent or hinder the operation of said railroad, and generally from interfering with the officers and agents of said receivers, or their employees, in any manner, by actual violence, or by intimidation, threats, or otherwise, in the full and complete possession and management of the said railroad, and of all the property thereunto pertaining, and from interfering with any and all property in the custody of the said receivers, whether belonging to the receivers or shippers or other owners, and from interfering, intimidating, or otherwise injuring or inconveniencing or delaying the passengers being transported or about to be transported over the railway of said receivers, or any portion thereof, by said receivers, or by interfering in any manner by actual violence or threat, and otherwise preventing or endeavoring to prevent the shipment of freight or the transportation of the mails of the United States over the road operated by said receivers, until the further order of this court."

On the 22d day of December, 1893, the receivers presented to the court their supplemental petition setting forth that the employees affected by the new schedules referred to in the former petition consisted of engineers, conductors, firemen, trainmen, switchmen, operators, and shopmen; that each of said classes of employees had appointed a committee to confer with the operating officers of the receivers, at St. Paul, with reference to the proposed change in the schedules, and stating the names of the members of those several committees; that such committees had confederated and agreed to cooperate and report to the various classes of employees along the line whom such committee especially represented a joint recommendation—that is to say, should said committees agree to report and recommend a strike along the line of the railroad, then the separate committees mentioned representing the different classes of employees along the line should report and recommend separately to the employees represented by such committee to strike. The petition further represented to the court that a subcommittee of thirty-two persons had been appointed by the joint committee to confer with the operating officers of the receivers, and to make report and recommendation to the joint committee, and that, should such subcommittee recommend a strike, the general and joint committee would report or recommend a strike, which the separate committees in turn would recommend or report to the different orders or classes of labor to which they belonged upon the lines of the railroad. The receivers further represented that the subcommittee of said general committee intended and was about to recommend and advise the general joint committee to recommend that the employees of the road should strike on or about January 1, 1894,

and that the general joint committee and the said several separate committees were about to recommend to the several classes of labor in the employment of the receivers to strike on or about that day; and the receivers further informed the court that, if such committees should recommend a strike, the individual employees along the line of the road would on the day recommended join in a general strike, unless the members of the committee were enjoined by the court from issuing any order or recommendation to strike; that the employees of the railroad held themselves bound to obey the order or recommendation of the committee; that almost all of the employees of the road belonged to one of the labor organizations of the engineers, conductors, firemen, trainmen, switchmen, operators, or shopmen, and also to national labor organizations comprising the employees in similar lines on almost all the other lines of railroad in the United States, namely, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherhood of Locomotive Firemen, the Order of Railway Telegraphers, and the Brotherhood of Railway Trainmen. The petition then proceeds to give the names of the executive heads of those organizations, and asserts that the employees will not strike unless such strike is ordered by one or more of the executive heads of the national labor organizations named, and that without an order from the executive head, no assistance would be given to the employees by the national organizations to which they belonged if they should attempt to strike. The petition further alleged that the railway in question was engaged in interstate commerce, and that the strike along the line of the road would not only cause irreparable damage to the trust property, but to a large portion of the country traversed by the Northern Pacific Railroad, because not reached by any other line of road or telegraph line or express company; that there were many communities along the line of the railroad whose entire commercial facilities were furnished by the three departments of the railroad operated by the receivers—the railroad, the telegraph, and the express—and that all classes of business men in large portions of the country traversed by the railroad operated by the receivers were dependent to a very large extent upon these three departments of service, and that large sections of country are dependent upon the railroad trains operated by the receivers for their necessary daily supply of fuel, provisions, etc. The petition asked for an order granting a writ of injunction restraining these committees and the heads of the national organizations mentioned from ordering or recommending or advising a strike.

Upon consideration of this petition an order was made directing a writ of injunction to issue as prayed in the original petition, and as prayed in the supplemental petition, with a similar direction with respect to the presentation of the order and writ to those courts in which ancillary bills had been filed for like orders from those courts. The writ of injunction issued upon this order was directed to the various persons named, and to their agents, subagents, representatives, and employees, and to the officers, agents, and employees of the receivers, and to the engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all other employees of the receivers, and to all persons, associations, and combinations, voluntary or otherwise, whether employees of said receivers or not, and to all persons generally. It embodied the provisions of the first writ, with the following additional clause:

"And from combining or conspiring together or with others, either jointly or severally, or as committees, or as officers of any so-called 'labor organization,' with the design or purpose of causing a strike upon the lines of railroad operated by said receivers and from ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time, and from ordering, recommending, advising, or approving, by communication or instruction or otherwise, the employees of the said receivers, or any of them, or of said Northern Pacific Railroad Company, to join in a strike on said January 1, 1894, or at any other time, and from ordering, recommending, or advising any committee or committees, or class or classes of employees of said receivers, to strike or join in a strike on January 1, 1894, or at any other time, until the further order of this court."

On the 15th day of February, 1894, P. M. Arthur, grand chief engineer and chief executive officer of the Brotherhood of Locomotive Engineers; E. E. Clark, grand chief conductor and chief executive officer of the Order of Railway Conductors; F. P. Sargent, grand chief fireman and chief executive officer of the Brotherhood of Locomotive Firemen; D. G. Ramsey, grand chief telegrapher and chief executive officer of the Order of Railway Telegraphers; S. E. Wilkinson, grand master and chief executive officer of the Brotherhood of Railway Trainmen, and John Wilson, grand master and chief executive officer of the Switchmen's Mutual Aid Association—in behalf of themselves and of their respective organizations and associations, and the members thereof, and in behalf of such of the employees of the receivers as are members of the said associations and organizations, moved the court to modify the writs of injunction by expunging and striking from the writs the parts italicised.

The motion was based upon the petition and supplemental petition and upon the orders of the court directing the issuance of the writs; and at the hearing the constitutions, statutes, and rules of order of the various organizations referred to were presented and considered in argument.

In the discussion of the important and interesting questions presented by this motion, it is not within the province of the court to assume part in the contest between capital and labor, which it is asserted is here involved. It may be that the aggregated power of combined capital is fraught with danger to the Republic. It may be that the aggregated power of combined labor is perilous to the peace of society and to the rights of property. It doubtless is true that in the contest the rights of both have been invaded, and that each has wrongs to be redressed. If danger to the State exists from the combination of either capital or labor requiring additional restraint or modification of existing laws, it is within the peculiar province of the legislature to determine the necessary remedy and to declare the general policy of the State touching the relations between capital and labor. With that the judicial power of the Government is not concerned. But it is the duty of the courts to restrain those warring factions, so far as their action may infringe the declared law of the land, that society may not be disrupted or its peace invaded, and that individual and corporate rights may not be infringed. It therefore becomes the duty of the court to inquire whether, in respect of the things complained of, there has been threatened violation of the law of the land and to determine the appropriate remedy, taking care, however, to apply the remedy without usurpation of jurisdiction, or, as remarked by Lord Chancellor Bacon, "to contain jurisdiction within the ancient mere-stones without removing the mark," and having also constantly in mind the maxim that the province of the court is "*dicere et non dare legem*." In this spirit, as I trust, I proceed to the consideration of the questions involved, taking occasion to express my obligation to counsel, whose able presentation of the law has much relieved the labor of the court, if it could not lighten its responsibility.

If the combination and conspiracy alleged, and the acts threatened to be done in pursuance thereof, are unlawful, it can not, I think, be successfully denied that restraint by injunction is the appropriate remedy. It may be true that a right of action at law would arise upon consummation of the threatened injury, but manifestly such remedy would be inadequate. The threatened interference with the operations of the railway, if carried into effect, would result in paralysis of its business, stopping the commerce ebbing and flowing through seven States of the Union, working incalculable injury to the property, and causing great public privation. Pecuniary compensation would be wholly inadequate. The injury would be irreparable. Compensation could be obtained only through a multiplicity of suits against 12,000 men, scattered along the line of this railway for a distance of 4,400 miles. It is the peculiar function of equity in such case, where the injury would result not alone in severe private but in great public wrong, to restrain the commission of the threatened acts, and not to send a party to seek uncertain and inadequate remedy at law. That jurisdiction rests upon settled and unassailable ground. It is not longer open to controversy that a court of equity may restrain threatened trespass involving the immediate or ultimate destruction of property, working irreparable injury, and for which there would be no adequate compensation at law. It will, in extreme cases where the peril is imminent and the danger great, issue mandatory injunctions requiring a particular service to be performed, or a particular direction to be given, or a particular order to be revoked, in prevention of a threatened trespass upon property or upon public rights. I need not enlarge upon this subject. The jurisdiction is beyond question, is plenary and comprehensive. Some of the authorities are assembled by Judge Taft in the case of *Toledo, A. & N. M. R. Co. v. Pennsylvania Co.* (54 Fed. Rep., 730; 19 L. R. A., 395), a case in which the court restrained Mr. Arthur, chief of the Brotherhood of Locomotive Engineers, from giving the order and signal for a strike which was intended to result in injury to the complainant's rights. See also, *Blindell v. Hagan* (54 Fed. Rep., 40), affirmed on appeal (6 C. C. A., 86; 56 Fed. Rep., 696); *Coeur d'Alene Consol. and Min. Co. v. Miners' Union of Wardner* (51 Fed. Rep., 260; 19 L. R. A., 382). It would be anomalous, indeed, if the court, holding this property in possession in trust, could not protect it from injury, and could not restrain interference which would render abortive all efforts to perform the public duties charged upon this railway.

It was suggested by counsel that, as improper interference with this property during its possession by the court is a contempt, punishment therefor would furnish ample remedy; and that, therefore, an injunction would not lie. This is clearly an erroneous view. Punishment for contempt is not compensation for injury. The pecuniary penalty for contumacy does not go to the owner of the property injured. Such contempt is deemed a public wrong, and the fine inures to the Government.

The injunction goes in prevention of wrong to property and injury to the public welfare; the fine, in punishment of contumacy. The authority to issue the writ is not impaired by the fact that, independently of the writ, punishment could be visited upon the wrongdoer for interference with property in the possession of the court. The writ reaches the inchoate conspiracy to injure, and prevents the contemplated wrong. The proceeding in contempt is *ex post facto*, punishing for a wrong effected.

Asserting then, as undoubted, the right of the court by its writ to restrain unlawful interference with the operation of this railway, I turn my attention to the objections urged to particular paragraphs of the writs. It is contended that the restraint imposed by that part of the original writ to which objection is made by this motion is in derogation of common right, and an unlawful restraint upon the individual to work for whomsoever he may choose, to determine the conditions upon which he will labor, and to abandon such employment whenever he may desire. In the determination of this question it is needful to look to the conditions which gave rise to the issuance of the writ. Here was a railway some 4,400 miles in length, traversing some seven States of the Union, engaged in interstate commerce, carrying the mails of the United States. This vast property was within the custody of the court, through its receivers, in trust, to operate it, to discharge the public duties imposed upon it, to keep it a going concern until the time should come to hand it over to its rightful owners with all public duties discharged, and with its franchise, rights, and privileges unimpaired. The receivers employed in the operation of this property some 12,000 men. These men are *pro hac vice*, officers of the court, and responsible to the court for their conduct. (Re Higgins, 27 Fed. Rep., 443.) The petition represented to the court—and the facts are confessed by this motion—that some of the men threatened to suddenly quit the service of the receivers, and to compel, by threats and force and violence, other employees who were willing to continue in the service, to quit their employment; that by organized effort, and by force and intimidation, they would prevent others from taking service under the receivers in place of those who might leave such service, and would thereby, as a means of forcing the receivers to submit to the terms demanded, disable the receivers from operating the road and discharging their duty to the public as a common carrier, and would so conduct themselves by disabling locomotives and cars, and taking possession of the property of the receivers, as to destroy and prevent its use, and hinder and embarrass the receivers in its management, thereby causing incalculable loss to the trust property, and inflicting great inconvenience and hardship upon the public. The restraining portion of the writ complained of, and now under consideration, prohibited these men from combining and conspiring to quit this service with the object and intent of crippling the property of the receivers and embarrassing the operation of the road, and from carrying that conspiracy into effect. The writ was in prevention of the mischief asserted. In no respect, as I conceive, does that portion of the writ interfere with individual liberty. None will dispute the general proposition of the right of every one to choose his employer, and to determine the times and conditions of service, or his right to abandon such service—to use the expression of Judge Pardee in *Re Higgins*, *supra*—"peaceably and decently." But it does not follow that one has the absolute right to abandon a service which he has undertaken, without regard to time and conditions. It is absurd to say that one may do as he will without respect to the rights of others. It is not infringement upon individual liberty to compel recognition of the rights of others. Liberty and license must not be confounded. Liberty is not the exercise of unbridled will, but consists in freedom of action, having due regard to the rights of others. There would seem to exist in some minds a lamentable misapprehension of the terms "liberty" and "right." It would seem by some to be supposed that in this land one has the constitutional right to do as one may please, and that any restraint upon the will is an infringement upon freedom of action. Rights are not absolute, but are relative. Rights grow out of duty and are limited by duty. One has not the right arbitrarily to quit service without regard to the necessities of that service. His right of abandonment is limited by the assumption of that service and the conditions and exigencies attaching thereto. It would be monstrous if a surgeon, upon demand and refusal of larger compensation, could lawfully abandon an operation partially performed, leaving his knife in the bleeding body of his patient. It would be monstrous if a body of surgeons, in aid of such demand, could lawfully combine and conspire to withhold their services. It was stated at the argument that this was not a fair illustration of the proposition, because human life was involved. I can not perceive that the aptness of the illustration is weakened because of that fact. Whether the effect be the destruction of life or the destruction of property the principle is the same. It would be intolerable if counsel were permitted to demand larger compensation and to enforce his demand by immediate abandonment of his duty in the midst of a trial. It would be monstrous

if the bar of a court could combine and conspire in aid of such extortion by one of its members and refuse their service. I take it that in such case, if the judge of the court had proper appreciation of the duties and functions of his office, that court for a time would be without a bar and the jail would be filled with lawyers. It can not be conceded that an individual has the legal right to abandon service whenever he may please. His right to leave is dependent upon duty, and his duty is dictated and measured by the exigency of the occasion. Ordinarily the abandonment of service by an individual is accompanied with so little of inconvenience and with such slight resulting loss that it is a matter of but little moment when or how he may quit the service. But for all that the principle remains, recognized by every just mind, that the quitting must be timely and decent, in view of existing conditions; and this, I take it, was Judge Pardee's meaning by the expression "peaceably and decently." He had occasionally only to deal with the particular facts he was considering, but the principle asserted is universal in its application. If what I have stated be correct as to individual action, the principle applies with greater force to the case of a combination of a large number of employees to abandon service suddenly and without reasonable notice, with the result of crippling the operation of the railway and injuring the public. The effect in this particular instance would have proven disastrous. These labor organizations are said to represent three-fourths of all the employees upon the railways within the United States—an army of many hundred thousands of men. The skilled labor necessary to the safe operation of a railway could not be readily supplied along 4,000 miles of railway. The difficulty of obtaining substitutes in the place of those who should leave the service would be intensified by the fact, asserted and conceded at the argument, that no member of these large organizations would dare to accept service in the place of those who should leave, because such acceptance would be followed by expulsion from their order and by social ostracism by their fellows. If this conspiracy had proven effective by failure on the part of the court to issue its preventive writ, this vast property would have been paralyzed in its operation, the wheels of an active commerce would have ceased to revolve, many portions of seven States would have been shut off in the midst of winter from necessary supply of clothing, food, and fuel, the mails of the United States would have been stopped, and the general business of seven States and the commerce of the whole country passing over this railway would have been suspended for an indefinite time. All these hardships and inconveniences, it is said, must be submitted to that certain of these men, discontented with the conditions of their service, may combine and conspire, with the object and intent of crippling the property, to suddenly cease the performance of their duties. It is said that to restrain them from so doing is abridgment of liberty and infringement of constitutional right. I do not so apprehend the law. I freely concede the right of the individual to abandon service at a proper time and in a decent manner. I concede the right of all the employees of this road, acting in concert, to abandon their service at a proper time and in a decent manner; but I do not concede their right to abandon such service suddenly and without reasonable notice.

The railway is a great public highway. Its primary duty is to the public. In the interest of the public it must be kept a going concern, although it prove unremunerative to the shareholders. Bondholders and shareholders invest their money in view of the public nature of the enterprise. Their rights and interests are subordinated to the public duty charged upon the road. And so also employees, in entering the service, assume obligations coextensive in kind with that of the corporation. They may, indeed, sever their relation in a proper and decent manner, but they may not legally resort to obstructive methods to compass their demands. Their rights, as the rights of bondholder and shareholder, are subordinate to the rights of the public, and must yield to the public welfare. This public consideration permeates and controls the whole subject. The reason is forcibly stated by Judge Ricks in the case of *Toledo, A. A. and N. M. R. Co. v. Pennsylvania Co.* (54 Fed. Rep., 746, 752; 19 L. R. A., 395), holding that the duties of an employee of a public corporation are such that he can not always choose his own time for quitting the service, in the following language: "Holding to that employer so engaged in this great public undertaking the relation they did, they owed to him and to the public a higher duty than though their service had been due to a private person. They entered its service with full knowledge of the exacting duties it owed to the public. They knew if it failed to comply with the law in any respect severe penalties and losses would follow for such neglect. An implied obligation was therefore assumed by the employees upon accepting service from it under such conditions that they would perform their duties in such manner as to enable it not only to discharge its obligations faithfully, but also to protect it against irreparable loss and injuries and excessive damages by any acts or omissions on their part. One of these

implied conditions on their behalf was that they would not leave its service, or refuse to perform their duties, under circumstances when such neglect on their part would imperil lives committed to its care, or the destruction of property involving irreparable loss or injury, or visit upon it severe penalties. In ordinary conditions, as between employer and employee, the privilege of the latter to quit the former's service at his option can not be prevented by restraint or force. The remedy for breach of contract may follow to the employer, but the employee has it in his power to arbitrarily terminate the relations and abide the consequence; but these relative rights and powers may become quite different in the case of the employees of a great public corporation, charged by the law with certain great trusts and duties to the public. An engineer and fireman who start from Toledo with a train of cars filled with passengers destined for Cleveland begin that journey under contract to drive their engine and draw the cars to the destination agreed upon. Will it be claimed that this engineer and fireman could quit their employment when the train is part way on its route and abandon it at some point where the lives of the passengers would be imperiled and the safety of the property jeopardized? The simple statement of the proposition carries its own condemnation with it. The very nature of their service, involving, as it does, the custody of human life and the safety of millions of property, imposes upon them obligations, and duties commensurate with the character of the trusts committed to them."

In the case under consideration the receivers sought to change the terms and conditions of service. The employees had, of course, the right to decline service upon the terms proposed. Notwithstanding the public character of the service, upon notification of their declination at a time prior to January 1, 1894, reasonable in view of the service in which they were engaged, they had the undoubted right to abandon their employment upon that day. That, however, is not the case presented to and dealt with by the court. Nor does the rectitude of the writ of injunction rest upon any mere right of the employees in good faith to abandon their employment. The restraint imposed was with reference to combining and conspiring to abandon the service with the object and intent of crippling the property. Its office was to restrain the carrying into effect of the conspiracy.

Was such a conspiracy unlawful? So long ago as 1821, Judge Gibson—that judge "of great and enduring reputation"—in the case of *Com. v. Carlisle, Brightley*, 36 (the case of a combination of employers to depress the wages of journeymen by artificial means), declared that "a combination is criminal when the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of the confederates." He clearly asserts the principle upon which combinations of men may become unlawful as follows: "It will therefore be perceived that the motive for combining, or, what is the same thing, the nature of the object to be attained as a consequence of the lawful act, is, in this class of cases, the discriminating circumstance. Where the act is lawful for an individual, it can be the subject of a conspiracy when done in concert only where there is a direct intention that injury shall result from it, or where the object is to benefit the conspirators to the prejudice of the public or the oppression of individuals, and where such prejudice or oppression is the natural and necessary consequence."

The doctrine thus declared is fully established. (*State v. Buchanan*, 5 Harr. & J., 317, 9 Am. Dec., 534; *State v. DeWitt*, 2 Hill. L., 282, 27 Am. Dec., 371; *State v. Norton*, 23 N. J. L., 33; *State v. Donaldson*, 32 N. J. L., 151, 90 Am. Dec., 649; *State v. Burnham*, 15 N. H., 396; *State v. Glidden*, 55 C. nn., 46; *Sherry v. Perkins*, 147 Mass., 212; *Smith v. People*, 25 Ill., 17, 76 Am. Dec., 780; *State v. Stewart*, 59 Vt., 273, 59 Am. Rep., 710; *Re Higgins*, 27 Fed. Rep., 443; *Cœur d'Alene Consol. and Min. Co. v. Miners' Union of Wardner*, 51 Fed. Rep., 260, 19 L. R. A., 382; *United States v. Workingmen's Amalgamated Council of New Orleans*, 54 Fed. Rep., 994.)

The reason is that the confederacy of numbers to effect an injurious object creates new and additional power to injure, and congregated numbers supply in law the place of actual violence. (*State v. Simpson*, 12 N. C., 504.) And therefore in conspiracy the unlawful thing proposed, whether as a means or an end, need not be such as would be indictable if proposed to be done by an individual. (2 Bishop *Crim. L.*, 7th ed., sec. 181.) I think the conclusion well summed up by Mr. Wright in his work on "The Law of Criminal Conspiracies," that a combination of men by concerted action, to accomplish some object not criminal, by means which are not criminal, but where mischief to the public is involved; or where neither the object nor the means are criminal, but where injury and oppression are the result, is a conspiracy condemned by law. That this is the general law of the land is recognized in those States which, by statute in respect to labor organizations, have changed the general rule. Thus the State of New Jersey passed a statute to this effect: "It shall not be unlawful for any two or more persons to unite, combine, or bind themselves

by oath, covenant, agreement, alliance, or otherwise, to persuade, advise, or encourage by peaceable means any person or persons to enter into any combination for or against leaving or entering into the employment of any person or persons or corporations."

The supreme court of that State, in the case of *Mayer v. Journeymen Stonecutters' Asso.* (47 N. J. Eq., 519, 531), declared that by that statute "the policy of the law with respect to such combinations was revolutionized, and what before that time would have been held to have been an unlawful combination and conspiracy became in this State a lawful association, and acts which had been the subject of indictment became inoffensive to any provision of our law." And to the same effect is the case of *Com. v. Sheriff* (10 Phila., 393), under the statute of Pennsylvania of June 14, 1872, and the supplemental act of April 20, 1876.

It becomes necessary, then, to consider whether there is any statute, national or State, applicable to the railway in question, which can be deemed to be a modification of the general law of the land. It was asserted at the argument with great confidence that the act of Congress entitled "An act to legalize incorporation of national trades unions" (24 Stat. L., chap. 567) had entirely changed the common law. I think the confidence of counsel in the assertion of the proposition was born of zeal, not of judgment. The statute provides for the formation of national trades unions, with power to establish constitution, rules, and by-laws to carry out its lawful objects, and defines the term "national trades union" to be "any association of working people having two or more branches in the States or Territories of the United States for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages, and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of the sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which workmen may lawfully combine, having in view their mutual protection or benefit."

The most that can be claimed for this statute is that it removes the common law disability of combination to raise the price of labor and to establish the conditions of labor. It contains no suggestion of any right to combine or conspire with a view to injure or oppress or interfere with the rights of others. The organization of labor for the purpose specified in the statute is lawful and commendable, but the statute does not sanction the use of a lawful organization for an unlawful purpose, nor does it permit such organization to invade the rights of others. Under this act labor may organize to regulate wages, the hours of labor, and the conditions of labor, and for the protection of individual rights in the prosecution of labor; but such lawful organization can not be employed to injure property, or for the oppression of others, or to harm the public welfare. There is nothing in the statute which sanctions that which the law, as above declared, condemns.

The statutes of Wisconsin (Sanborn & Berryman, Rev. Stat., sec. 4466a) render it unlawful for "two or more persons to combine, associate, agree, mutually undertake, or concert together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act." By section 4466c it is rendered unlawful for any person, by threats, intimidation, force, or coercion of any kind, to hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as workman, or to attempt to so hinder or prevent. By section 4466d a punishment is provided for anyone, who, individually or in association with others, shall willfully injure or interfere with or prevent the running or operation or shall destroy any locomotive engine or cars or machinery. These statutes are declaratory of the common law, and wholly condemn all conspiracies to injure or oppress, or to interfere with the rights of others. Their efficacy is in no degree impaired by any statutory recognition of the right of organization for the purpose of promoting the welfare of labor.

I have been referred to no statute in any State traversed by the Northern Pacific Railroad, and have been able to find none, which in any way changes the law in this regard. I think no State has gone so far in modification of the general rule as have the States of New Jersey and Pennsylvania. But there, as elsewhere, all labor organizations must be for lawful objects, to be accomplished by lawful means. If the ostensible purpose be legal, and the means for its accomplishment legal, still if the real and secret purpose be illegal—as, for example, that purpose be of extortion or of injury to another—the wrong can not be shielded under the guise of a lawful organization. And where the object is to be accomplished by violence, intimidation, and the destruction of property, by coercion and by injury to the public, the organiza-

tion, although formed for an ostensible legal object, is diverted to illegal purposes, and is to that extent unlawful.

Applying the principles of law, as I thus find them established, to the case in hand as presented by the original petition for the writ, it is clear that the facts charged presented to the court the case of an unlawful conspiracy. If it be conceded that the entire force of 12,000 men employed upon this railway had the legal right to abandon the service in a body, that right must be asserted and exercised in good faith. The abandonment of service must be actual, not pretentious. The combination can not be justified on the plea of the lawful exercise of a right when the threatened abandonment of service is a mere pretext, the real intent and design being to cripple the property and to hinder and prevent the operation of the road; and such was the conspiracy declared to the court—not denied, but confessed by the present motion. It was a conspiracy to compel by intimidation the receivers of the railway against their will to accede to the demands of the conspirators, and, therein failing, to cripple this property and prevent the operation of the road, the necessary result of which would be to inflict great loss upon the public. The conspiracy disclosed was a conspiracy to extort, and, failing to extort, to injure, the pretentious exercise of the right to abandon service being one of the means to effect the object of the conspiracy. If the right to quit service in a body be conceded, the case presented is the ostensible exercise of a lawful right, not in good faith, but for an unlawful purpose, to wit, the intimidation and oppression of others and the injury to property in their keeping, tending to the prejudice of the public. Such a conspiracy is unlawful.

It may also be properly said that the conspiracy was as needless as its results would have been disastrous. This vast property was in the custody of the court, through its receivers. By the schedules which for some years had been in force in the operation of this road, as well as by the new schedules proposed to be adopted by the receivers, a thorough civil service had been established in the management of this railway, recognizing by systematic promotion length of service and skillful and honest performance of labor. The service contemplated was continuous and permanent. No man could be discharged except for cause, of which he was to be informed. The right of a hearing upon such charge was secured to him, with right of successive appeals to the superior officers of the road. The employee, however, had the right to abandon his employment at any time. Thus capital and labor cooperated to assure employment, the reward of skill and faithfulness, and protection from discharge from service except for justifiable cause. This operated to render the service efficient, conserving the interests of both capital and labor and advancing the public welfare. It was natural and to be expected that in consequence of financial disaster there would arise the question of the reduction of wages. An employee, deeming himself wronged by the action of the receivers in respect thereto, had peaceful remedy. The court was at all times open to him to listen to his complaint, and to redress it, if it should appear to be well founded. Upon such application the receivers would be bound to obey the order of the court in the premises.

The employee, nevertheless, not content with the judgment of the court, would have the right to abandon his employment. The case furnishes, as was suggested by counsel, an exceptional instances where one party to a proceeding in a judicial tribunal is bound by the decision and the other is not. There was therefore neither justification nor excuse for a conspiracy to hinder and prevent the operation of this railway, nor necessity for combination for the assertion of any legal right. But if there were no remedy for the employee except abandonment of service, the law will not sanction a conspiracy the purpose of which is to extort from the receivers or from the court concessions which they could not properly yield, and, failing to procure them, to hinder and prevent, by the means declared, the operation of this railway, to the injury of the trust and to the oppression of the public. Such was the combination and conspiracy here disclosed. It was to the prevention of the injury thus contemplated that this writ was directed. Its issuance, in my judgment, is justified by the law.

The second branch of the motion has reference to the writ of injunction issued upon the supplemental petition of the receivers, restraining any combination or conspiracy having for its purpose the inauguration of a strike upon the lines of the railway operated by the receivers and from ordering, advising, or approving, by communication or instruction or otherwise, the employees of the receivers to join in a strike. This part of the motion presents the issue whether a strike is lawful. The answer must largely depend upon the proper definition of the term. It has been variously defined. By Wooster, "To cease from work in order to extort higher wages as workmen;" by Webster, "To quit work in a body, or by combination in order to compel their employers to raise their wages;" the Encyclopedic Dictionary, "The act of workmen in any trade or branch of industry when they leave their work

with the object of compelling the master to concede certain demands made by them—as an advance of wages, the withdrawal of a notice of reduction of wages, a shortening of the hours of work, the withdrawal of any obnoxious rule or regulation, or the like;" the Imperial Dictionary, "To quit work in order to compel an increase or prevent a reduction of wages;" the Century Dictionary, "To press a claim or demand by coercive or threatening action of some kind; in common usage, to quit work along with others, in order to compel an employer to accede to some demand, as for increase of pay or to protest against something, as a reduction of wages; as to strike for higher pay or shorter hours of work." Bouvier defines it: "A combined effort of workmen to obtain higher wages or other concessions from their employers by stopping work at a preconcerted time." The definition sanctioned by the court of appeals of New York in *Delaware, L. & W. R. Co. v. Bowns* (58 N. Y., 581), and embodied by Mr. Anderson in his *Law Dictionary*, is: "A combination among laborers, or those employed by others, to compel an increase of wages, change in the hours of labor, a change in the manner of conducting the business of the principal, or to enforce some particular policy in the character or the number of men employed, or the like."

Mr. Black, in his *Law Dictionary*, defines it to be: "The act of a party of workmen employed by the same master in stopping work all together at a preconcerted time, and refusing to continue until higher wages or shorter time or some other concession is granted to them by the employer." Whichever definition may be preferred—and possibly no one of them is precisely accurate—there are running through all of them two controlling ideas: First, by compulsion to extort from the employer the concession demanded; second, a cessation of labor but not the abandonment of employment. The stoppage of work is designed to be temporary, continuing only until the accomplishment of the design, and upon its accomplishment the resumption of employment. The cessation of labor is not a bona fide dissolution of contractual relations and an abandonment of the employment, but is designed as a means of coercion to accomplish the desired result. The cessation of labor is prearranged by the body of men through their organizations, and is to take effect simultaneously at a stated time, for the purpose of preventing the master from continuing his business, and to compel him to submit to the dictation of his servants. The definition of the term proffered to the court at the argument, recognized by the labor organizations of the country, was this: "A strike is a concerted cessation of or refusal to work until or unless certain conditions which obtain or are incident to the terms of the employment are changed."

The employee declines to longer work, knowing full well that the employer may immediately employ another to fill his place; also knowing that he may or may not be reemployed or returned to service. The employer has the option of acceding to the demand and returning the old employees to service, of employing new men, or of forcing conditions under which the old men are glad to return to service under the old conditions." This latter definition recognizes the idea of cessation of labor, but not an abandonment of employment. It suggests that the latter may result at the option of the master. It does not, in terms, declare a combination to extort, or to oppress, or to interfere in any way with the business of the employer, except as injury might result as an incident to the cessation of service. If the latter be the correct definition of a strike, society has been needlessly alarmed. I doubt if, in the light of the history of strikes, the child would be recognized by this baptismal name. One who has read the history of the strike at Homestead, with its cruel murders and barbarous torture; one who has read of the various strikes on railways, when cars were fired, rails torn up, engines demolished, and life destroyed; one who has read of the not infrequent summoning of the militia by the authorities of the State to put down riot and turbulence—the universal concomitants of a strike—would hardly yield assent to the definition suggested as even faintly conveying the true idea of a strike, as known of all men. The only force suggested is the force of inertia, the compulsion wrought by cessation from labor. Such a strike would be a harmless affair, and generally inoperative to effect the end designed. It could be availing only by the combination of the entire labor force of the country, in the nature of things impracticable. Unless, by other coercive measures, the employer is prevented from obtaining men in the place of those who should cease to work, a strike would be a mere weapon of straw. That is well understood by these organizations. While, according to the definition, the employee knows "full well that the master may immediately hire another to fill his place," he also knows full well that that must, at all odds, be prevented if the strike is to be made successful. Consequently, the organizations provide, as confessed at the argument, for the expulsion and social ostracism of all members of the organizations who should not abandon work when the order to strike is given, or who should seek to fill the place of a striking member. Thus one of the most effective engines

of compulsion is brought to bear upon unwilling members to effect the design of the combination. With respect to laborers not members and willing to work, other and not less effective means of intimidation must be and are employed in prevention of labor. The history of strikes declares that this intimidation has always taken the shape of threats and personal violence. Constructive violence has failed in large measure to prevent the continuance of operation of business by the master. Naturally, therefore, we find resort to actual violence, the destruction of property, the disabling of railway trains, and the like.

Of the ideal strike, in the definition proposed at the argument, the only criticism to be indulged is that it is ideal, and never existed in fact. Undoubtedly, in the absence of restrictive contract, workmen have a right by concerted action to cease work, to procure better terms of service, no compulsion being used except that incident to the cessation, subject, however, to the qualification, at least with respect to those employments that directly concern the public welfare, that reasonable notice of the quitting should be given; but such is not the strike of history. The definition suggested is misleading and pretentious. To my thinking, a much more exact definition of a strike is this: A combined effort among workmen to compel the master to the concession of a certain demand by preventing the conduct of his business until compliance with the demand. The concerted cessation of work is but one of, and the least effective, of the means to the end, the intimidation of others from engaging in the service, the interference with and the disabling and destruction of property, and resort to actual force and violence when requisite to the accomplishment of the end being the other and more effective means employed. It is idle to talk of a peaceable strike. None such ever occurred. The suggestion is impeachment of intelligence. From first to last, from the earliest recorded strike to that in the State of West Virginia, which proceeded simultaneously with the argument of this motion, to that at Connellsville, Pa., occurring as I write, force and turbulence, violence and outrage, arson and murder have been associated with the strike as its natural and inevitable concomitants.

No strike can be effective without compulsion and force. That compulsion can only come through intimidation. A strike without violence would equal the representation of the tragedy of Hamlet with the part of Hamlet omitted. The moment that violence becomes an essential part of a scheme or a necessary means of effecting the purpose of a combination, that moment the combination, otherwise lawful, becomes illegal. All combinations to interfere with perfect freedom in the proper management and control of one's lawful business, to dictate the terms upon which such business shall be conducted, by means of threats or by interference with property or traffic or with the lawful employment of others, are within the condemnation of the law. It has well been said that the wit of man could not devise a legal strike, because compulsion is the leading idea of it. A strike is essentially a conspiracy to extort by violence, the means employed to effect the end being not only the cessation of labor by the conspirators, but the necessary prevention of labor by those who are willing to assume their places, and, as a last resort, and in many instances an essential element of success, the disabling and destruction of the property of the master, and so, by intimidation and by the compulsion of force, to accomplish the end designed. I know of no peaceable strike.

I think no strike was ever heard of that was or could be successful unaccompanied by intimidation and violence. Counsel at the argument could recall but one which he was willing to indorse as peaceable. That was the strike upon the Lehigh Valley Railroad during the year 1893. The history of that occurrence does not carry out the declaration of counsel. There, as I understand, the running of trains was constantly interfered with—engines and cars disabled and wrecks caused by the violence of the strikers. The president of the company reported to his board of directors that the loss to freight and equipment by reason of the strike—which continued for less than three weeks—was \$77,000, of which amount \$46,000 was for damage done to locomotives alone. And that strike was not successful, the violence being insufficient. The history and legality of strikes has been well told by Mr. Justice Brewer, of the Supreme Court of the United States, in an admirable address before the New York Bar Association in January, 1893, in language that should be taken to heart by everyone who has regard to the safety and peace of society and the protection of our institutions.

"The common rule," says Mr. Justice Brewer, "as to strikes is this: Not merely do the employees quit the employment, and thus handicap the employer in the use of his property, and perhaps in the discharge of duties which he owes to the public, but they also forcibly prevent others from taking their places. It is useless to say that they only advise; no man is misled. When a thousand laborers gather around a railroad track and say to those who seek employment that they had better not, and

when that advice is supplemented every little while by a terrible assault on one who disregards it, everyone knows that something more than advice is intended. It is coercion—force; it is the effort of the many, by the mere weight of numbers, to compel the one to do their bidding. It is a proceeding outside of the law, in defiance of the law, and in spirit and effect an attempt to strip from one that has that which of right belongs to him—the full and undisturbed use and enjoyment of his own. It is not to be wondered at that deeds of violence and cruelty attend such demonstrations as these, nor will it do to pretend that the wrongdoers are not the striking laborers, but lawless strangers who gather to look on. Were they strangers who made the history of the Homestead strike one of awful horror? Were they women from afar who so maltreated the surrendered guards, or were they the very ones who sought to compel the owners of the property to do their bidding?

"Even if it be true that at such places the lawless will gather, who is responsible for their gathering? Weihe, the head of a reputable labor organization, may open the door to lawlessness, but Beekman, the anarchist and assassin, will be the first to pass through; and thus it will be always and everywhere. * * * This is the struggle of irresponsible persons and organizations to control labor. It is not in the interests of liberty; it is not in the interest of individual or personal rights. It is an attempt to give to the many a control over the few—a step toward despotism. Let the movement succeed, let it once be known that the individual is not free to contract for his personal services, that labor is to be farmed out by organizations, as to-day by the Chinese companies, and the next step will be a direct effort on the part of the many to seize the property of the few."

No word of mine could give added strength to the thought suggested. The strike has become a serious evil, destructive to property, destructive to individual right, injurious to the conspirators themselves, and subversive of republican institutions. Certainly no court should give encouragement to any combination thus destructive of the very fabric of our Government, tending to the disruption of society, and the obliteration of legal and natural rights. Whatever other doctrine may be asserted by reckless agitators, it must ever remain the duty of the courts, in the protection of society, and in the execution of the laws of the land, to condemn, prevent, and punish all such unlawful conspiracies and combinations. Of this duty it was forcibly said by Judge Baker, of the district of Indiana, under like circumstances, in the *Lake Erie & Western* cases: "It may do for men that are reckless of the welfare of human society, who care nothing for its peace and good order, to imperil life, property, and liberty, and the perpetuity of our institutions by teaching such doctrines; but the judge who tolerates it ought to be stripped of his gown and be driven from the sacred temple of justice."

The wrongs of labor are not to be righted by war upon society, by turbulence and disorder, by oppression and force. Such action alienates sympathy and provokes resentment. In this land, only by peaceable means in the courts and through the lawmaking power can wrongs be redressed and justice be established. Let combined labor deal with combined capital, but only in ways sanctioned by the law. When this lesson is learned, and becomes the rule of conduct, labor will acquire in a decade greater privileges and surer protection from wrong than could be extorted by a century of violence.

By the act of Congress of July 2, 1890 (26 Stat. L., chap. 647), every combination in restraint of trade or commerce among the several States is declared to be illegal. Under this act it was held by Judge Speer, in *Waterhouse v. Comer* (55 Fed. Rep., 149; 19 L. R. A., 403), that a strike, if it ever was effective, can be so no longer; and this view seems to have been held by Judge Billings in the case of *United States v. Workmen's Amalgamated Council of New Orleans* (54 Fed. Rep., 994). On the other hand, Judge Putman, in *United States v. Patterson* (55 Fed. Rep., 605), is inclined to the view that the statute has no relation to labor organizations. I do not find it needful to enter into this field of discussion, or to express an opinion upon the subject, being content to rest my conclusion upon the grounds discussed.

One clause of the supplemental injunction has been characterized as wholly unwarranted. That clause is: "And from ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad on January 1, 1894, or at any other time." In fairness, this clause must be read in the light of the statements of the petition. It was therein asserted to the court that the men would not strike unless ordered so to do by the executive heads of the national labor organizations, and that the men would obey such orders instead of following the direction of the court. This clause is specially directed to the chiefs of the several labor organizations. The use of the words, "order, recommend, approve, or advise," was to meet the various forms of expression under which by the constitution or by-laws of these organizations the command was cloaked—as, for instance,

in the one organization the chief head "advises" a strike, in another he "approves" a strike, in another he "recommends" the quitting of employment. Whatever terms may be employed the effect is the same. It is a command which may not be disregarded, under penalty of expulsion from the order and of social ostracism. This language was employed to fortify the restraints of the other portions of the writ, and to meet the various disguises under which the command is cloaked. It was so inserted out of abundant caution that the meaning of the court might be clear, that there should be no unwarrantable interference with this property, no intimidation, no violence, no strike. It was perhaps unnecessary, being comprehended within the clause restraining the heads of these organizations from ordering, recommending, or advising a strike, or joinder in a strike. It is said, however, that the clause restrains an individual from friendly advice to the employees as a body or individually, as to their or his best interest in respect of remaining in the service of the receivers. Read in the light of the petitions upon which the injunction was founded, I do not think that such construction can be indulged by any fair and impartial mind. It might be used as a text for a declamatory address to excite the passions and prejudices of men, but could not, I think, be susceptible of such strained construction by a judicial mind. The language of a writ of injunction should, however, be clear and explicit, and, if possible, above criticism as to its meaning. Since, therefore, the language of this particular phrase may be misconceived, and the restraint intended is, in my judgment, comprehended within the other provisions of the writ, the motion in that respect will be granted, and the clause stricken from the writ.

In all other respects the motion will be denied.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the 3d day of said month, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth, to wit, on Monday, the 11th day of June, A. D. 1894.

Present: The Hon. Augustus J. Ricks, United States district judge.

Among the proceedings then and there had were the following, to wit:

THE BALTIMORE AND OHIO RAILROAD COMPANY, A CORPORATION,

LOCAL UNION NUMBER —, UNITED MINE WORKERS OF AMERICA; the Officers of said Local Union Number —; the Members of said Local Union Number —; the Miners of Sub-district Number Six of Ohio, and others whose names are unknown to the complainant, and the Cleveland, Lorain and Wheeling Railway Company.	No. 5273. Equity.
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Whereas in the above cause, a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof being fixed for the twenty-eighth day of June, 1894, at the United States circuit court rooms, at Cleveland, Ohio, and it having been made to appear that there is danger of irreparable injury being caused to complainant and others before the hearing of said application for a writ of injunction, unless the said respondents are restrained as herein set forth, therefore complainant's application for such restraining order is granted.

Now, therefore, take notice that you, the said local union number —, United Mine Workers of America, the officers of said local union number —, the members of said local union number —, the miners of subdistrict number 6 of Ohio, and others whose names are unknown to the complainant, and each of you, as well as all other persons, are hereby especially restrained and enjoined from in any manner, directly or indirectly, delaying, hindering, or obstructing the receipt or movement of any coal by said The Cleveland, Lorain and Wheeling Railway Company, or its delivery to said company by said The Baltimore and Ohio Railroad Company, and from in any manner interfering, directly or indirectly, with said The Cleveland, Lorain & Wheeling Railway Company's use or right to use its railroads, tracks, switches, side tracks, turntables, cars, engines, tools, station houses, water tanks, bridges, right of way, or other property necessary to be used or employed by said company in the receipt, handling, or carriage of said coal, and from in any manner, by threats, violence, intimidations, or otherwise, obstructing, interfering with, hindering, or delaying any of the employees of said railway company engaged in the transportation of said coal, or

any part thereof, until the hearing of said application for a writ of injunction and the further order of this court in the premises.

And further, take notice that you, the Cleveland, Lorain and Wheeling Railway Company, *your servants, agents, and employes* are restrained and enjoined, until the hearing upon said application for a writ of injunction and the further order of the court in the premises, *from failing or refusing* to receive from the said The Baltimore and Ohio Railroad Company, and to forward any and all coal received from it or tendered to you by The Baltimore and Ohio Railroad Company, coming from points on the line of the said Baltimore and Ohio Railroad Company and destined to Cleveland, Ohio, or other points on the line of road of said The Cleveland, Lorain and Wheeling Railway Company.

THE UNITED STATES OF AMERICA, *ss.*

I, Irvin Belford, clerk of the circuit court of the United States, within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order entered upon the journal of the proceedings of said court in the therein entitled cause, at the term and on the day therein named; and do further certify that the same is a true, full, and complete transcript and copy thereof.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 21st day of April, A. D. 1900, and in the 124th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk,*
By B. C. MILLER, *Deputy Clerk.*

THE UNITED STATES OF AMERICA,

Northern District of Ohio, Eastern Division, ss.

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the 3d day of said month, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth, to wit, on Monday, the 11th day of June, A. D. 1894.

Present: The honorable Augustus J. Ricks, United States district judge.

Among the proceedings then and there had were the following, to wit:

THE CLEVELAND, CANTON AND SOUTHERN
Railway Company,

v.

THE KNICKERBOCKER TRUST CO., OF NEW
York, as Trustee, etc., et al.

} 5156. Chancery.

This day came the petitioners, John W. Wardwell and Frederick Swift, receivers of the court, who were, on the 15th day of September, 1893, duly appointed to take custody and control of all the property rights, credits, choses in action, rolling stock, tracks, side tracks, bridges, trestles, and all and singular the property of the Cleveland, Canton & Southern Railway Company, and file in this case their petition, in which they state that in the discharge of their duties as such receivers in operating said road, they are transporting large quantities of coal consigned from points in West Virginia to parties residing in Canton, Cleveland, and other points along the line of said road in the State of Ohio; that in shipping said coal, the cars containing the same pass over the line of the railroad in portions of Stark County, in this judicial district. Said petitioners further represent that a large body of miners and other persons along the line of said road, among whom are James Finney, Mike Hadley, sr., John Hadley, Charles Brain, Thomas Adley, William Hay, Harmon Slusser, Joe Fish, Andy Winkheart, H. Sheersmiths, John Bailis, John Fetheringham, Charles Winkheart, Jerry Gible, William Hodson, Joe Greaten, Andrew Hay, Joe Simler, Albert Simler, Rheinart Longontre, Joe Martindale, Peter Maulbaugh, John Finney, Nick Finney, Peter Adams, George Ray, Peter Merts, sr., Peter Merts, jr., Thos. McNeal, Rheinart Botch, Joe Stanz, Eron Roderick, John Johnson, Wm. Grabrel, Charles Hoovic, John Smith, Joe Palmbo, Wm. Brindle, Paul Roden, Edward Greaten, Albert Berger, John Griffith, Peter Reed, Frank Ashman, Harmon Felt, John Unkersheit, Henry Bokel, Anthony Parks, George Freditsy, and a large number of associates and confederates, whose names are unknown, have entered into a combination and conspiracy to prevent petitioners from operating said road, and from moving its cars of coal and other freight; that said persons and their confederates have combined to prevent said receivers from moving their coal cars through Stark County, and that sundry persons have threatened to blow up, and have actually

attempted to burn the bridges of said railroad, and have threatened to cut the telegraph wires, and destroy the coal and other property being shipped over said road, and to injure and destroy the cars, engines, and property of said road now in possession and custody of the petitioners as receivers. Said petitioners further represent that they have reason to believe, and do believe, that said persons will carry their said threats into execution and destroy said property if petitioners attempt to move any of the cars in their possession loaded with coal over said road, and that they have no means for protecting said coal, or the property in their possession, other than by the process of this court.

Now, upon the facts alleged in said petition, and it appearing to the court that the apprehensions of said receivers, in part at least, are well founded, it is now hereby ordered that the marshal of this district summon such number of men as, in his judgment, may be necessary to protect the property so as aforesaid in the custody of the court, and to protect the employes of the receivers in the operation of the same and in the handling of interstate freight; and that he proceed as soon as possible to the points along the line of said road where said coal is being stored or handled, and where the property of the receivers is threatened, and protect the receivers, their agents, and employees in the lawful possession and use of the same. Said marshal is further directed to warn, by proclamation and otherwise, all persons not to interfere with or molest any of the cars, engines, tracks, sidetracks, bridges, trestles, or freight or any other property belonging to said road or in the custody of said receivers for transportation, advising them that the same is in the custody of this court for public use, and must and will be protected by the power and authority of the Government of the United States.

Said marshal is further directed and ordered to restrain and prevent all persons from unlawfully interfering with the officers and agents of said receivers, or their employes, in any manner, by actual violence, or by intimidation, threats or otherwise, in the full and complete possession and management of said railroad and all the property thereunto pertaining, and from interfering with any and all property in the custody of the receivers, whether belonging to the receivers or to shippers or other owners, and from interfering with, intimidating, or otherwise injuring, inconveniencing or delaying passengers or freight being transported or about to be transported over the railway of said receivers, or from interfering in any manner by actual violence, threat or otherwise preventing or endeavoring to prevent shipment of coal or other freight, or the transportation of the mails of the United States, over the road operated by said receivers.

And the marshal is directed to carry out these orders by giving direct notice and warning, as far as possible, and by making public proclamation to the persons specially named in this order and to all other persons restraining and prohibiting them from doing any of the unlawful acts forbidden in this order. All persons, whether named in this order or not, who in any way interfere with the property in the receiver's custody or control, with or without special notice, will be dealt with as violators of the law. The property being in the custody of this court, for public use, all persons are charged with notice of that custody and use, and if they in any way interfere with it, will be dealt with accordingly.

THE UNITED STATES OF AMERICA, ss:

I, Irvin Belford, clerk of the circuit court of the United States within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order entered upon the journal of the proceedings of said court in the therein entitled cause, at the term and on the day therein named; and do further certify that the same is a true, full, and complete transcript and copy thereof.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 21st day of April, A. D. 1900, and in the 124th year of the independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk*,
By B. C. MILLER, *Deputy Clerk*.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division, ss:*

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the fourth day of said month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third, to wit, on Tuesday, the 18th day of October, A. D. 1898.

Present: The honorable Eli S. Hammond, district judge.

Among the proceedings then and there had were the following, to wit:

THE AMERICAN STEEL AND WIRE COMPANY, COMPLAINANT,	} Order. No. 5812.
WIRE DRAWERS' AND DIE MAKERS' UNION, No. 1, OF CLEVELAND, Ohio, Walter Gillett et al., defendants.	

This cause came on for hearing upon the bill of complaint and complainants' application for a temporary injunction, upon the answers of certain of the defendants, and affidavits filed on behalf of complainants and defendants, and the testimony by way of cross-examination of certain of the witnesses in open court, and the court, being fully advised in the premises, finds that the complainant is entitled to a temporary injunction, as follows:

It is hereby ordered, adjudged, and decreed that the Wire Drawers' and Die Makers' Union No. 1, of Cleveland, Ohio, Walter Gillett, its president, and Wire Drawers' and Die Makers' Union No. 3, of Cleveland, Ohio, Fred Walker, its president, and the officers and members of said unions, and each and all of the other defendants named in the complainants' bill, and any and all other persons associated with them in committing the acts and grievances complained of in said bill be, and they are hereby, ordered and commanded to desist and refrain from in any manner interfering with, hindering, obstructing, or stopping any of the business of the complainant, the American Steel & Wire Company, or its agents, servants, or employees, in the operation of its said American mill, or its other mills in the city of Cleveland, county of Cuyahoga and State of Ohio, or elsewhere; and from entering upon the grounds or premises of the complainant for the purpose of interfering with, hindering, or obstructing its business in any form or manner; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, *persuasion*, force, or violence, any of the employees of the American Steel & Wire Company to refuse or fail to perform their duties as such employees, and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of the employees of complainant to leave the service of complainant, and from preventing or attempting to prevent any person or persons, by threats, intimidation, force, or violence, from entering the service of complainant, the American Steel & Wire Company, and from doing any act whatever in furtherance of any conspiracy or combination to restrain either the American Steel & Wire Company or its officers or employees in the free and unhindered control of the business of the American Steel & Wire Company, and from ordering, directing, aiding, assisting, or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid.

And the said defendants, and each and all of them, are forbidden and restrained from congregating at or near the premises of the said American mill or other mills of the American Steel & Wire Company in said city of Cleveland, for the purpose of intimidating its employees or coercing said employees or preventing them from rendering their service to said company, and from inducing or coercing by threats said employees to leave the employment of the American Steel & Wire Company, and from in any manner interfering with the American Steel & Wire Company in carrying on its business in its usual and ordinary way, and from in any manner interfering with or molesting any person or persons who may be employed or seeking employment by the American Steel & Wire Company in the operation of its said American mills and other mills.

And the said defendants, and each and all of them, are hereby restrained and forbidden, either singly or in combination with others, from collecting in and about the approaches to said complainant's American mill or other mills for the purpose of picketing or patrolling or guarding the streets, avenues, gates, and approaches to the property of the American Steel & Wire Company for the purpose of intimidating, threatening, or coercing any of the employees of complainant or any person seeking the employment of complainant; and from interfering with the employees of said company in going to and from their daily work at the mill of complainant.

And defendants and each and all of them are enjoined and restrained from going, either singly or collectively, to the homes of complainant's employees or any of them for the purpose of intimidating or coercing any or all of them to leave the employment of the complainant or from entering complainant's employment, and, as well, from intimidating or threatening in any manner the wives and families of said employees at their said homes.

And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon each of the said defendants and all of them so named in said bill, from and after service upon them severally of a copy of this order by delivering to them severally a copy of this order, or by reading the same to them;

and shall be binding upon each and every member of said Wire Drawers' and Die Makers' Union No. 1 of Cleveland, Ohio, and Wire Drawers' and Die Makers' Union No. 3, of Cleveland, Ohio, from the time of notice or service of a copy of this order upon the said Walter Gillett and Fred Walker, and other members of said unions, parties defendant herein, and shall be binding upon said defendants whose names are alleged to be unknown from and after the service of a copy of this order upon them, respectively, by reading of the same to them or by publication thereof by posting or printing, and shall be binding upon the said defendants and all other persons whatsoever who are not named herein from and after the time when they severally have knowledge of the entry of this order and the existence of this injunction.

This order to continue in effect until the further order of this court; and upon said complainants entering into bond in the sum of two thousand five hundred dollars, conditioned for the payment of costs and moneys adjudged against them in case this injunction shall be dissolved.

And thereupon came said defendants by their counsel and in open court gave notice of their intention to appeal this cause, and the court do allow said appeal upon the filing of an appeal bond in the sum of one thousand dollars.

THE UNITED STATES OF AMERICA, ss:

I, Irvin Belford, clerk of the circuit court of the United States within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order of the court, entered upon the journal of the proceedings of said court in the therein entitled cause, at the term and on the day therein named, and do further certify that the same is a true, full, and complete transcript and copy thereof.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 21st day of April, A. D. 1900, and in the 124th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk.*
By B. C. MILLER, *Deputy.*

THE STATE OF OHIO, *Hamilton County*, ss:

Court of common pleas of Hamilton County. Order of injunction.

ANTHONY G. BRUNSMAN AND A. F. KLAUSMEYER, PLAINTIFFS,
v.
FRED ATHERON ET AL., DEFENDANTS.

Injunction undertaking in \$1,500. Executed on behalf of plaintiff.

To the defendants, Fred Atherton, B. Johnson, C. Johnson, Clarence Ethel, J. Dunkman, Frank Delbrugge, George Brinker, Frank O'Brien, Jos. O'Brien, William Rixman, Jas. Schoenberger, Fred Seipel, Fred Aulthausen (or Aulthouse), Ben Schafer, W. Duncan, Fred Daum, Charles Schultz, Robert Miller, Tom Murphy, William Montague, William Johnson, Henry Wolsterman, Robert Fumont, John Dorman, J. A. Shepherd, John Darr, William Schubler, Geo. Ramsey, James Condron, Jos. Duffy, John Weddendorf, Eugene Lippert, Andrew Beard, Andrew Berry, Charles Brown, Fred Waltzer, C. W. Dunkman, John Bruder, P. J. Clark, L. Plock, J. Gundlander, Clifford Meyers, R. Cavanaugh, J. Latchford, Jonah Williams, Jacob Herborn, G. Delfendahl, A. Collins, J. Dwyer, L. Moorman, John Pfeffer, John Renning, Frank Cruse, John Brady, Ben Kruse, William Utz, George Yockey, William Koettel, Edward T. Valdois, Henry Nadderman, Chas. Beard, J. Widmer, F. Weber, F. Schull, Julius Schneider, F. A. Schumacher, J. Grindlart, Frank Hoy, Clem Peter, Ben Schoenrock, John Steigerwald, Fred J. Scharing, Thos. O'Hara, J. M. Duffy, John Reuss, Joe Brown, Bill Sneak, Jack Maertz, John Gibing, William Dilg, Adam Strack, Henry Schoensleben, William Doolan, E. Palmer, Frank Stifel, George Boch, H. Schafer, William Kalker, John Weber, William Long, Jack Penning, Weed Condron, J. Westfield, H. Alsop, Ed. Lohrey, Geo. Opferheck, John Yetter, William Endres, J. Roeder, William Males, Wm. Arnold, — Suntletack (first name unknown), — Bauer (first name unknown), — Spinweber (first name unknown), — Van Pelt (first name unknown), H. Lange, N. Doll, Conrad Gerhardt, Max Vogelgesang, Henry Laehr, John Bruton, John Reuss, Joe Busam, Wm. Finkelbach, Geo. Falk, Geo. Briner, John J. Gardner, William Werner, Louis Vogel, George D. Silver, Wm. Liebermann, Jos. Herzog, Fred Schoner, C. Bartholomew, Henry Staver, Geo. Abbott, John Conway, Clarence Harris, Geo. Veid, Bernard Grothe, Charles Mugial, C. W. Hoffman, Walter McGrath, E. Putman, William Tillet, Henry Schaeffer, James Cunningham, Ed. Funk, W. Pahner, W. D.

Johnson, H. J. Ostendorf, Ed. Harris, Robert Theiring, Thos. Casey, Robert Weber, Richard Steifel, Andrew Berry, Geo. Ramsey, Ed. Rees, Wm. Schulte, Geo. Cook, C. A. Peterson, John Kniep, Moritz Stocker, John F. Tonsing, the Carriage and Wagon Makers' International Union of North America, the Carriage Trimmers' Union No. 38 of the Carriage and Wagon Makers' International Union of North America, the Local Union No. 23 of the Carriage and Wagon Makers' International Union of North America, the Mounters and Craters' Union No. 57 of the Carriage and Wagon Makers' International Union of North America, the Carriage Painters' Union No. 41 of the Carriage and Wagon Makers' International Union of North America, defendants, you, and each of you, and the members, officers, agents and servants of the Carriage and Wagon Makers' International Union of North America, of the Carriage Trimmers' Union No. 38 of the Carriage and Wagon Makers' International Union of North America, of the Local Union No. 23 of the Carriage and Wagon Makers' International Union of North America, of the Mounters and Craters' Union No. 57 of the Carriage and Wagon Makers' International Union of North America, of the Carriage Painters' Union No. 41 of the Carriage and Wagon Makers' International Union of North America, and all other persons acting with you or them, or any of you or them, be, and are hereby, restrained and enjoined—

First. From in any manner interfering with the persons in the employ of plaintiffs.

Second. From in any manner interfering with any person who may desire to enter or to remain in the employment of the plaintiffs, whether by way of threats, persuasion otherwise than peaceful, violence, insults, intimidations, or other means calculated or intended to prevent such persons from entering into or continuing in the employment of plaintiffs, or to influence or induce such persons not to enter or to leave his employment.

Third. From congregating or loitering about or in the neighborhood of plaintiffs' factory or in other places with the intent to interfere with the employees of the plaintiffs in anywise, either while they are at work or on their way to or from work, or with intent to interfere with or obstruct in any manner plaintiffs' trade or business.

Fourth. From picketing or patrolling the factories of plaintiffs or the neighborhood or approaches thereto, and from loitering about said factories, the houses or boarding places of plaintiffs' employees, or any of them, or causing any of such actions to be done by others, and from encouraging, assisting, or advising any such actions for the purpose of intimidating or interfering with plaintiffs' officers, employees, business, or property.

Fifth. From interfering with the free access of plaintiffs' employees to plaintiffs' premises, and with their free return to their homes, boarding places, and other places to which they may desire to go.

Sixth. From gathering at the approaches to or in and about plaintiffs' factories to interfere with or hinder the free conduct or control of plaintiffs' business and property, until the further order of the court.

United States of America. Eastern division of the eastern district of Missouri. In the circuit court thereof.

THE WABASH RAILROAD COMPANY, COMPLAINANT,

v.

JOHN J. HANNAHAN, CHARLES A. LEWTON, FRED ENGLEHARDT, B. W. Shafer, Charles J. Augur, A. H. Martin, H. C. Niemeyer, J. R. Courtney, E. C. White, F. H. Hecox, Geo. W. Bradley, Jos. Sell, P. H. Morrissey, F. G. Shepard, T. R. Dodge, W. E. Rowe, O. H. Wilkins, H. McManus, Timothy Shea, Wm. McKay, F. W. Arnold, A. E. Jordon, W. G. Lee, defendants.

In equity.

Now on this day this cause coming on to be heard on the motion of complainant for a preliminary restraining order or injunction, as prayed for in said bill, and complainant having exhibited its sworn bill to the Hon. Elmer B. Adams, judge, and the court being now fully advised in the premises, and having heard read said bill, it is ordered that a writ of injunction issue out of and under the seal of this court, commanding said defendants, Charles A. Lewton, Fred Englehardt, B. W. Shafer, Charles J. Augur, A. H. Martin, H. C. Niemeyer, J. R. Courtney, E. C. White, F. E. Hecox, George W. Bradley, Joseph Sell, F. G. Shepard, W. E. Rowe, H. McManus, William McKay, John J. Hannahan, P. H. Morrissey, T. R. Dodge, C. H. Wilkins, Timothy Shea, F. W. Arnold, A. E. Jordon, and W. G. Lee, and each of them, individually and as representatives of the Brotherhood of Locomotive Firemen and of Brotherhood of Railroad Trainmen, their representatives, clerks, agents, and attorneys, and all others who may be aiding and abetting, or acting in

concert with them and under their direction, absolutely to desist and refrain from in any way or manner ordering, coercing, *persuading, inducing, or otherwise causing, directly or indirectly, the employees of the Wabash Railroad Company, complainant, engaged in or about the operation of its trains within the United States, as brakemen, watchmen, or locomotive firemen, to strike or quit the service of said company, and from in any way molesting or interfering with said company's said employees, or with the operation of its trains or conduct of its business as a common carrier, and from molesting or interfering with said railroad company, its officers, agents, or employees, in respect to the operation of its trains or the employment of men for or in connection therewith, or from preventing or interfering with said company in carrying out its contracts of employment with its employees and its contracts with shippers for the transportation of property, and from interfering with or preventing said railroad company from affording reasonable, proper, and equal facilities for the interchange of traffic between its lines of railroad and other lines of railroad connecting therewith, and the receiving, forwarding, and delivery of passengers and property to and from its lines of railroad with other railroads connecting with such lines, and making a continuous carriage of freight from the place of shipment to the place of destination, and from preventing or interfering with such railroad company's connecting lines and their employees in the like interchange of traffic and facilities with said Wabash Railroad Company, and from ordering, advising, or otherwise influencing employees of such connecting lines to refuse to interchange traffic and afford facilities therefor, and from interfering with or preventing said Wabash Railroad Company and its connecting lines from complying with the requirements of the interstate commerce act of the United States, and with their said agreements with each other in respect to said facilities for the interchange of traffic, and the receiving and interchanging of traffic, and from interfering with or preventing said railroad company in the carrying of the mail in accordance with its contracts with the United States and the laws relating thereto, to the end that by any of the acts or means aforesaid the said defendants, their agents or servants, shall not interfere with said railroad company in the discharge or prevent said railroad company from discharging its duties and obligations with respect to interstate commerce, or prevent it from performing any or all of its duties or obligations imposed by the act of Congress approved February 4, 1887, and amendments thereto in relation to interstate commerce.*

ELMER B. ADAMS,
U. S. District Judge.

St. Louis, March 3, 1903.

In the circuit court of the United States for the eastern division of the eastern district of Missouri.

WABASH RAILROAD COMPANY }
v.
JOHN J. HANNAHAN ET AL. }

It is ordered that the injunctive order heretofore this day made herein be, and the same is, so far modified as to permit the defendants, or either of them, within fifteen days from this date, to move to set aside the same, or to dissolve or modify the injunctive order in such a way and manner as they may be advised; and

It is further ordered that the injunctive order this day filed herein, as so amended, be and remain in full force until the further order of this court.

ELMER B. ADAMS,
U. S. District Judge.

St. Louis, March 3, 1903.

In the circuit court of the United States for the eastern division of the western district of Tennessee.

THE MOBILE AND OHIO RAILROAD COMPANY }
v.
E. E. CLARK et al. }

On opening the foregoing bill of the Mobile and Ohio Railroad Company v. E. E. Clark and others, it is now ordered that the clerk issue a notice to be served by the marshal upon the parties defendant mentioned in the said bill, who are within the jurisdiction of this court, to show cause, if any they have, at a session of this court to be held in the court-house at Jackson, Tenn., at 10 o'clock on Wednesday, May 13, 1903, or as soon thereafter as the court can sit, why the application of the plaintiff for a preliminary injunction, according to the prayer of the bill aforesaid, should

not be granted; and, in the meantime, all of the parties defendant aforesaid are hereby restrained from doing any of the acts complained of in the bill aforesaid, as follows, to wit:

Absolutely to desist and refrain *from in anyway or manner interfering with, hindering, obstructing, or stopping any* of the business of the plaintiff as a common carrier of passengers and freight between and among any States of the United States, and from in any way or manner interfering with, *hindering, obstructing, or stopping any* mail trains, express trains, or other trains, whether freight or passenger, engaged in interstate commerce, or carrying passengers or freight between and among the States; and from in any manner interfering with, *hindering, or stopping any* train carrying the mail; and from in any manner interfering with, *hindering, obstructing, or stopping any* engines, cars, or rolling stock of said plaintiff, engaged in interstate commerce, or in connection with the carriage of passengers or freight between or among the States; and from in any manner interfering with, *injuring, or destroying any* of the property of said railroad engaged in or used for the purpose of, or in connection with interstate commerce or the carriage of the mails of the United States or the transportation of passengers or freight between or among the States; and from entering upon the grounds, or premises of said plaintiff for the purpose of interfering with, *hindering, obstructing, or stopping any* of said mail trains, passenger or freight trains engaged in interstate commerce, or in the transportation of passengers or freight between or among the States, or for the purpose of interfering with, *injuring, or destroying any* of said property so engaged in or used in connection with interstate commerce or the transportation of passengers or property between or among the States; and from *injuring or destroying any* part of the track, roadbed, or road, or permanent structures of said railroad, and from *injuring or destroying, or in any way interfering with any* of the signals or switches of said railroad, and from throwing or displacing any of the signals or switches of said railroad; and from displacing or distinguishing any of the signals of said railroad; and from spiking, locking, or in any manner fastening any of the switches of said railroad, and from uncoupling or in any way hampering or obstructing the control of said railroad or any of the cars, engines, or parts of trains of said railroad engaged in interstate commerce, or in the transportation of passengers or freight between or among the States, or engaged in carrying any of the mails of the United States; and from *compelling or inducing or attempting to compel or induce* by threat, intimidation, *persuasion, force, or violence, any* of the employees of said railroad to refuse or fail to perform any of their duties as employees of said railroad in connection with the interstate business or commerce of such railroad, or the carriage of the United States mail by such railroad, or in transportation of passengers or property between or among the States, and from *compelling or inducing, or attempting to compel or induce* by threats, intimidation, force, or violence any of the employees of said railroad who are employed by such railroad and engaged in its service in the conduct of interstate business, or in the operation of any of its trains carrying the mail of the United States, or doing interstate business, or the transportation of passengers and freight between and among the States, to leave the service of the said plaintiff, the Mobile & Ohio Railroad Company, and from preventing any person whatever by threats, intimidation, force, or violence from entering the service of said railroad and doing the work thereof, in the carrying of the mails of the United States, or the transportation of passengers and freight between or among the States; and from doing any act whatever in furtherance of any conspiracy or combination to restrain said railroad company in the free and unhindered control and handling of interstate commerce over the line of said railroad, and the transportation of persons and freight between and among the States; and from ordering, directing, aiding, assisting, or abetting in any manner whatever any person or persons to commit any or either of the acts aforesaid; and ordering and commanding each and all of said defendants and all other persons aiding or assisting them in any manner whatsoever from loitering or congregating on the said plaintiff's property, depot grounds, switch yards, depot houses, main track, whether upon its trains or cars, and they shall in no way interfere with the said plaintiff's business in the free transportation of interstate commerce.

And it is further ordered that the marshal serve this notice as speedily as possible upon the following parties named as defendants in the said bill, to wit:

E. E. Clark, grand chief conductor of the Order of Railway Conductors of America; W. T. Anderson, chief conductor of Subordinate Lodge No. 149; G. B. Harris, secretary and treasurer of said Subordinate Lodge No. 149; P. H. Morrissey, grand master of the Brotherhood of Railroad Trainmen; L. P. Garner, master of local lodge; J. W. Garrett, secretary; E. F. Dougherty, chairman; J. A. Matthews, secretary; Lee George, William Shoeless, J. J. Lott, W. C. Rust, chairman; James Hargo, secretary;

L. J. Locke, C. H. Wilkins, grand senior conductor of the Order of Railway Conductors; W. G. Lee, first vice-grand master of the Brotherhood of Railroad Trainmen; C. W. Nichols, N. James, W. J. Kenny, J. M. Johnson, W. B. Whitaker, J. J. Clarke, J. M. Maxwell, R. L. White, J. H. M. Scott, J. J. Aldridge, M. Hill, J. H. Manor, J. W. Mullins, J. G. Brown, W. M. Williams, C. F. Esterwood, R. H. Briggs, J. A. Matthews, T. A. Hill, T. B. May, S. M. Christie, W. C. Hancock, W. M. Hornsby, W. M. Brewster, W. F. Gaffney, W. H. Foster, F. S. Carter, J. F. Lawler, D. L. West, W. G. Teague, A. J. Howard, G. R. Baker, C. V. Taylor, A. F. Brannum, J. T. Broadwell, T. H. Woodward, G. F. Jackson, W. H. Parker, W. R. Austin, E. G. Mason, H. W. Collins, O. J. Cochran, C. P. Inman, C. B. Choate, J. W. Hunt, A. B. Danner, C. C. Pruitt, W. R. McKnight, L. Lewis, W. L. King, J. T. Warren, W. E. Seat, C. H. Ramer, E. E. McGee, W. M. Sullivan, C. B. Mason, J. J. Franklin, J. S. Murrell, J. C. Stewart, T. A. Parham, W. H. Jones, K. S. Taylor, C. E. Webb, J. C. Ross, O. W. Butler, E. M. Baker, W. W. Holmes, H. Manor, R. J. Touhy, F. M. Lain, W. C. Blackmon, R. C. McAnally, C. C. Moore, J. B. McAbee, W. I. Neff, F. R. Robinson, J. A. Smith, L. C. Tinkle, W. H. Merritt, A. K. Abernathy, M. O. Furr, J. V. Tillman, C. Clay, E. P. Lister, J. G. Nichols, R. A. Mafee, W. T. Rook, P. R. Dougherty, A. S. Richardson, G. W. Creasy, H. B. Carr, J. W. Johnson, E. A. Jackson, Ed. Paulk, Y. M. Russell, C. E. Gorman, all residents of Jackson, Madison County, Tennessee; and all other members of said order whose names are unknown.

[SEAL.]

MAY 11, 1903.

E. S. HAMMOND.

In the circuit court of the United States for the eastern division of the eastern judicial district of Missouri.

United States of America, complainant, *vs.* Wm. D. Mahon et al., defendants. 4282.

And now on this day, this cause coming on to be heard on the motion of complainant for a preliminary restraining order or injunction as prayed in complainant's bill, and the court having heard and read said bill and the various affidavits filed in support of and in opposition to said motion and being now fully advised in the premises, it is

Ordered, That a writ of injunction issue out of and under the seal of this court, commanding the defendants named in the original and supplemental bills herein, namely, Wm. D. Mahon, Mack Missick, Harry Bryan, J. J. Ryan, M. A. Howard, Samuel Lee, John H. Painter, Elbridge M. Myers, Edward Hungate, T. B. Edwards, J. W. Brewer, T. A. Bennington, J. Bennington, Clarence Richardson, C. J. Surles, E. Baldwin, J. Sherley, D. Huffman, Roy Stevenson, F. Berry, O. Baird, William Woodhouse, C. Seward, G. Morgan, William Montgomery, J. Wolf, Frank George, J. P. Madson, A. D. Price, I. A. Kidwell, A. L. Yake, Charles Johnson, Peter Reinhardt, Samuel Collins, ——— Knabb (whose first name is unknown), Jos. E. Durham, James Justice, H. M. Spencer, William Vaughn, Fred Thalgott, F. Brockmeyer, Andrew Adams, W. L. Booker, T. D. Spaulding, Jno. V. Faherty, Shearman Patterson, Joseph F. Murphy, Charles A. Speidel, Otto E. Lawman, Arthur Waddell, W. D. Kirby, John Breeder, J. G. Green, Charles Habel, Michael George, J. W. Foster, Robert H. Carruthers, Isaac A. Kidwell, Charles A. Kenney, Jack Horner, Tom Berry, Tom King, James W. Odell, Wm. Moore, Chas. H. Price, W. C. Hogue, Harry G. Hutchings, Abayah Kinder, Jesse W. Hubbard, James P. Madson, ——— Ewing, Henry C. Groggin, Jno. W. McGuire, Jos. Sexton, George W. Foster, Chas. B. McDonald, Thos. B. Morrow, Isaac A. Wayne, John Kilker, J. W. Sappington, Tom Whalen, Frank R. Laughner, Louis Marks, Fred Rehling, Thomas Whalen, Horrace Beave, John Johnson, Henry W. Steinbiss, Curtis W. Mayhan, C. Wright, J. H. Bennett, Henry Lepper, Albert Senner, Leonard A. Cromer, to B. Flowers, Thomas Cronier, Andrew Fitzgerald, Wm. Flynn, until the further order of this court, and their servants, agents, and employees and all other persons acting in confederation, association, or collusion with them or either of them and under their dictation and authority from and after the time when they shall severally have knowledge of the making of this order, and until the further order of this court, from in any manner interfering with the power houses, tracks, poles, wires, rails, cars, or other appliances used in operating and so as to affect the operation of mail cars upon and over any of the postal routes in the city and county of St. Louis, as described in said bill, over the lines of the St. Louis Transit Company, and from in any way or manner, directly or indirectly, obstructing or interfering with the running of mail cars upon the postal routes aforesaid, and from harassing, assaulding, or interfering with any person or persons

in the employ of the St. Louis Transit Company, engaged in or about the maintaining or operation of the tracks, wires, poles, cars, or other appliances necessary for and used in the operation of said mail cars over and upon the routes aforesaid, or engaged in clearing or repairing the said lines or tracks of said postal routes, or engaged in picketing or patrolling the power houses, stopping places, stations, tracks, or approaches thereto for any purpose of preventing or interfering with the movement of any such mail cars upon any of such postal routes; and that until the further order of this court they be further enjoined and restrained from gathering, or inducing others to gather, in large numbers on or about the said street-railway tracks or approaches thereto for the purpose last aforesaid mentioned, and be further enjoined and restrained until like further order from injury or destroying any part of the appliances or property of any of such mail-car lines so as to interfere with the operation of mail cars thereon, and from placing any obstruction upon the tracks or wires, and from cutting, obstructing, or interfering with the same in any manner whatever so as to hinder or delay the movement of said mail cars.

(Signed)

ELMER B. ADAMS, Judge.

JUNE 25, 1900.

In United States circuit court for western district of Arkansas, Fort Smith division.

PRELIMINARY INJUNCTION.

The Kansas & Texas Coal Company, plaintiff, *versus* William Denney et al., defendants.

The President of the United States to Wm. Denney, Thos. Sweeny, Dave M'Lane, Hugh Gaffney, Virgil Davenport, Dan Bales, Charlie Robinson, Geo. Williams, Wm. Law, W. P. Fitzgerald, Charlie Parr, Geo. Bunch, Gus Galloway, Bruce Jordan, Lee Anderson, Wm. Cofflet, Ed Cofflet, Wm. Cofflet, jr., Victor King, Bob King, Sol Lodge, A. Mottlinger, James M'Nelly, Tom M'Guire, J. A. Piland, Lee Shaw, Geo. Simmons, Jonathan Thomas, J. L. Tracy, J. K. Miller, and the officers and members of the local, or Huntington, union or society of the Union Mine Workers of America, District No. 21, and to all other persons who shall be served with a copy of this injunction or to whom knowledge of the same may come:

Whereas, in the above-entitled cause now pending in the United States court for the western district of Arkansas, Fort Smith division thereof, upon application duly made to the said court on the 22d day of April, 1889, it was ordered that a preliminary writ of injunction issued herein as prayed for in the bill of complaint herein filed, which said order, among other things, provided as follows:

That you and each of you, and all other parties, be and are hereby enjoined and restrained from doing any and all of the following acts and deeds, to wit:

First. From in any way or manner interfering with, hindering, obstructing, or stopping any of the business of the Kansas & Texas Coal Company in, near, or about the town of Huntington, in the county of Sebastian and State of Arkansas, in the operation of its coal mines, or any other part of its business in said town of Huntington or elsewhere.

Second. From entering upon the grounds and premises of the plaintiff, or congregating thereon or thereabouts, for the purpose of interfering with, hindering, or obstructing the plaintiff in its business in any form or manner.

Third. From compelling, inducing, or attempting to compel or induce by threats, intimidation, unlawful persuasion, force or violence any of the employees of the Kansas & Texas Coal Company to refuse or fail to perform their duties as such employees.

Fourth. From compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, unlawful persuasions, or violence any of the employees of the Kansas & Texas Coal Company to leave the service of the said company, and from preventing, or attempting to prevent, any person or persons, by intimidation, threats, force, unlawful persuasion, or violence from entering the service of the Kansas & Texas Coal Company.

Fifth. From doing any act whatever in furtherance of any conspiracy or combination to retain or to hinder the Kansas & Texas Coal Company, its officers or employees, in the free and unhindered control of the business of the Kansas & Texas Coal Company.

Sixth. From ordering and directing, aiding, assisting, abetting or encouraging in any manner whatever, any person or persons to commit any of the acts aforesaid.

Seventh. From congregating at or near or on the premises or property of the Kansas & Texas Coal Co. in, about or near the town of Huntington, Arkansas, or

sewhere, for the purpose of intimidating its employes, or coercing said employes, or preventing said employes from rendering services to the Kansas & Texas Coal Company.

Eighth. From inducing or coercing, by threats, intimidation, force, or violence, any of the said employes to leave the employment of the Kansas & Texas Coal Company, and from in any manner interfering with said Kansas & Texas Coal Company, in carrying on its business in its usual and ordinary way, and from in any manner interfering with or molesting any person or persons who may be employed or seek employment by and of the Kansas & Texas Coal Company in the operation of its coal mines at and near said town of Huntington, or elsewhere.

Ninth. From trespassing or going upon the grounds, premises, or property of the Kansas & Texas Coal Company, which are more particularly described hereinafter, and from gathering in and about any said property in large numbers, or in company with each other, or other persons who are not herein named, for any of the purposes hereinbefore prohibited.

The property sought to be protected herein consists, in part, as follows:

Mine No. 51, about one and a half miles north of west of Huntington; mine No. 63, about one and a quarter miles from Huntington in direction as aforesaid; mine No. 63, situated just outside of the town limits of said town; mine No. 65, two miles east of Huntington, on Frisco road; and mine No. 45, now abandoned, but with machinery still about it; and the top houses, tipplers, engine houses, boiler houses, n houses, airshafts, engines, boilers, tracks, pumps, ventilating fans, stables, mules; all cars, mine timbers, blacksmith shops, powder magazines, company store and warehouses and stocks of merchandise, tenement houses, and all other real and personal and mixed property whether herein named and designated, or herein omitted, belonging to said mines, or belonging to or in the possession or control of the Kansas & Texas Coal Company. Also, strip pits, leases, and various and divers other kinds and classes of property too numerous to mention or specifically describe.

And you and each of you are hereby commanded that you do desist and refrain from doing or causing to be done or aiding or abetting in doing, or causing to be done, any of the acts or things herein recited; or interfering or injuring, or attempting to interfere with or injure, any of the property herein mentioned, or any other property of the Kansas & Texas Coal Company whether herein mentioned specifically or omitted.

And you are hereby further notified that the matters and things required of the plaintiff by the court have been complied with, and that the marshal is instructed to serve this preliminary injunction upon you and each of you, and any and all other parties that he receives information are about to do, or contemplate doing, any of the matters and things herein forbidden; and he is further ordered to give publicity to this injunction in and about the town of Huntington and to warn the parties herein mentioned, and all others, of the purport of this order and the penalties attending a violation thereof; the form of this injunction having been approved by the court.

Witness the honorable John H. Rogers, judge of said court on this 22d day of April, 1899, and the seal of said court.

JOHN H. ROGERS,
United States District Judge.

Attest:

[SEAL.]

(Not made returnable.)

THOMAS BOLES, *Clerk.*

ORDER.

At a circuit court of the United States for the northern district of West Virginia, continued and held in Parkersburg, in said district, on the 11th day of June, 1902, the following order was made and entered of record, to wit:

H. Wheelwright, complainant, *vs.* Thomas Haggerty et al., defendants.—In equity.

On this the 11th day of June, 1902, J. H. Wheelwright, the complainant in this action, by A. B. Fleming, his counsel, presented to this court his bill of complaint, alleging, among other things, that the defendants, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines operated by the Fairmont Coal Company, and by such interferences preventing the employees of the Fairmont Coal Company from mining and producing coal in and from the mines belonging to and operated by said Fairmont Coal Company, and that unless the court grant an immediate restraining

order, preventing them from interfering with the employees of the owners of said mines, there was great danger of irreparable damages and loss to the owners of said mines.

Upon consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed restraining and inhibiting the defendants and all others associated or connected with them from in any way interfering with the management, operation, or conduct of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines and of working in and about said mines.

And the defendants are further restrained from entering upon the property of the owners of the said Fairmont Coal Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property or in anywise molesting, interfering with or intimidating the employees of the Fairmont Coal Company, so as to induce them to abandon their work in and about said mines, and the defendants are further restrained from assembling in or near the paths, approaches, and roads upon and near said property leading to and from their homes and residences to the mines, along which the employees of the Fairmont Coal Company are compelled to travel to get to and from their work or from in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation, and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines or assembling upon said property at or near the entrance to said mines, or from marching near to or in sight of said mines or either of them, or of the residences of said employees.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants in the promotion of such unlawful combinations and conspiracies from entering upon the property of the Fairmont Coal Company described in this order, and from in anywise interfering with the employees of said company in their mining operations, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in and about the mines or in any way advising such acts as may result in violation and destruction of the rights of the Fairmont Coal Company.

The motion for permanent injunction is set down for hearing in the United States courtroom at Parkersburg, on the 15th day of July, 1902.

This injunction is not to take effect until the plaintiff or some responsible person for him shall enter into a bond in the sum of five thousand dollars, conditioned to pay all such costs and damages as will accrue to the defendants by reason of the plaintiff suing out this injunction.

And service of a copy of this shall be deemed and held sufficient notice of this order.

Enter.

JACKSON, Judge.

ORDER.

At a circuit court of the United States for the northern district of West Virginia, continued and held in Parkersburg, in said district, on the 19th day of June, 1902, the following order was made and entered of record, to wit:

Guaranty Trust Company of New York, complainant, *versus* Thomas Haggerty, et al., defendants—In equity.

On this the 19th day of June, 1902, Guaranty Trust Company, of New York, the complainant in this action, by E. F. Hartley, its counsel, presented to this court its bill of complaint, alleging, among other things, that the defendants, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines operated by the Clarksburg Fuel Company, and by such interferences preventing the employees of the Clarksburg Fuel Company from mining and producing coal in and from the mines belonging to and operated by said Clarksburg Fuel Company, and that unless the court grant an immediate restraining order, preventing them from interfering with the employees of the owners of said mines, there was great danger of irreparable damages and loss to the owners of said mines.

Upon consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed restraining and inhibiting the

fendants and all others associated or connected with them from in any way interfering with the management, operation, or conduct of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation and to prevent the employees of said mines from going to or from said mines and of working in and about said mines.

And the defendants are further restrained from entering upon the property of the owners of said Clarksburg Fuel Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in anywise molesting, interfering with, or intimidating the employees of the Clarksburg Fuel Company, so as to induce them to abandon their work in and about said mines.

And the defendants are further restrained from assembling in or near the paths, proaches, and roads upon and near said property leading to and from their homes and residences to the mines, along which the employees of the Clarksburg Fuel Company are compelled to travel to get to and from their work, or from in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces or intimidation, and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance to said mines, or from marching near to or in sight of said mines, or either of them, or the residences of said employees.

The defendants are further inhibited and restrained from assembling together in camp or otherwise at or near or so near the mines of the Clarksburg Fuel Company, or at or so near the residences of its employees as to disturb, alarm, or intimidate such employees so as to prevent them from working in the mines or to prevent or interfere with them in passing to or from their work at the mines, or in otherwise interfering with them as the employees of the Clarksburg Fuel Company.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies and to restrain all the defendants in the promotion of such unlawful combinations and conspiracies from entering upon the property of the Clarksburg Fuel Company described in this order, and from in anywise interfering with the employees of said company in their mining operations, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in and about the mines, or in any way advising such acts as may result in violations and destruction of the rights of the Clarksburg Fuel Company.

The motion for permanent injunction is set down for hearing in the United States court room at Parkersburg, on the 15th day of July, 1902.

This injunction is not to take effect until the plaintiff or some responsible person for him shall enter into a bond in the sum of five thousand dollars, conditioned to pay all such costs and damages as will accrue to the defendants by reason of the plaintiff suing out this injunction.

And service of a copy of this order shall be deemed and held sufficient notice of its order.

Enter.

J. J. JACKSON,
Judge, D. C. U. S. N. D. W. Va.

At a circuit court of the United States for the southern district of West Virginia, continued and held at Charleston, in said district, on Friday, the 27th day of June, A. D. 1902, the following order was made and entered of record, to wit:

— vs. Joe Crisco et als.—In equity.

On this the 26th day of June, 1902, the complainant in this suit, by its counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the southern district of West Virginia, its bill of complaint, alleging, among other things, that the defendants named in its said bill are about to prevent the employees of the plaintiff from mining and producing coal in and from its mines and performing other labor in and about its mines, and that unless the undersigned judge granted an immediate restraining order preventing them from interfering with the employees of the plaintiff, there was great danger of irreparable injury and damage and loss to the said plaintiff, inasmuch as the defendants are insolvent and wholly responsible in damages in an action at law.

Upon consideration whereof it is ordered that the plaintiff's bill be filed with the clerk of this court, and that process be issued thereon, and a temporary restraining

order is hereby allowed restraining and inhibiting the defendants, to wit, Joe Crisco, Paul Dufait, Mother Jones, Mike Miller, W. B. Wilson, and Chris Evans, their confederates, and all others associated with them, from interfering with the plaintiff's employees now in its employ at or upon its premises, or from interfering with any person in or upon its premises who may desire to enter its employment hereafter, by the use of threats, personal violence, or intimidation, or by any other means whatsoever calculated to intimidate, terrorize, and alarm, or place in fear any of the employees of the plaintiff in any manner whatsoever at or upon its premises.

And the said defendants and all other persons associated with them are hereby enjoined from undertaking by any of the means or agencies mentioned in the plaintiff's bill, from going upon the plaintiff's land or premises to induce or cause any of the employees of the plaintiff to quit or abandon work in the mines of the plaintiff, or upon its premises, as set forth and described in its bill; and said defendants and their associates are hereby enjoined from congregating in, on, or about the premises of the plaintiff for the purpose of inducing the employees in said mines to quit and abandon work in them.

And the said defendants, their confederates and associates, are further restrained from conducting or leading any body or bodies of men up to or upon the premises of the plaintiff for the purpose of inducing or causing the plaintiff's employees to quit and abandon working for the plaintiff, or from in any manner interfering with, directing, or controlling plaintiff's employees or its lands or premises, or from interfering in the business of the plaintiff and upon its lands or premises, as set forth in the plaintiff's bill.

And the said defendants, their associates and confederates, are hereby enjoined from going upon any part of the plaintiff's land and premises for the purpose of intimidating, coercing, or endeavoring to procure and induce the plaintiff's employees to cease from working in its mines and upon its premises, by any improper threats, unlawful means, or agencies whatsoever; and the said defendants are enjoined, as well as their confederates and associates, from in any unlawful manner interfering with the plaintiff's employees while they may be passing to and from their work in said mines, on and near the plaintiff's premises.

This injunction shall not take effect until the plaintiff or some one for it shall enter into a bond in the penalty of \$5,000 before the clerk of this court, conditioned to pay all such costs and damages as may accrue to the defendants, or any of them, by reason of the suing out of this injunction.

The motion for a permanent injunction is set down for hearing at Bluefield, at the United States court room in said city, on the 16th day of July, 1902.

UNITED STATES OF AMERICA,

Southern District of West Virginia, ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, do hereby certify that the foregoing is a true copy of an order entered of record in said court on the 27th day of June, 1902, in the equity cause of the _____ *vs.* Joe Crisco et als., therein pending; and I do further certify that bond in the sum of five thousand (5,000) dollars has been given as therein directed.

Given under my hand and the seal of said court at Charleston, in said district, this 27th day of June, 1902.

A copy. Attest:

Clerk C. C. U. S., S. D. W. Va.

Clerk C. C. U. S., S. D. W. Va.

At a circuit court of the United States for the southern district of West Virginia, continued and held at Charleston, in said district, on Friday, the 4th day of July, A. D. 1902, the following order was made and entered of record, to wit:

Blume Coal & Coke Company *vs.* Thomas Brooks et als.—In equity.

On this the 3rd day of July, 1902, the plaintiffs in this suit, by their counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the southern district of West Virginia, their bill of complaint, alleging, among other things, that the defendants named in their said bill are about to prevent the employees of the plaintiffs from mining and producing coal in and from its mines, and unless the undersigned judge grant an immediate restraining order preventing them from interfering with the employees of the plaintiffs there was great danger of

reparable injury and damage and loss to the said plaintiffs, in as much as the defendants are insolvent and wholly irresponsible in damage in an action at law.

Upon consideration whereof it is ordered that the plaintiffs' bill be filed with the clerk of this court, and that process do issue thereon, and a temporary restraining order is hereby allowed, restraining and inhibiting the defendants, Thomas Brooks, George Bobbitt, Joe Crisco, Paul Dufait, "Mother" Jones, Cris Evans, and W. B. Wilson, their confederates, and all others under their direction from interfering with the plaintiffs' employees now in their employ at or upon their premises, or from interfering with any person in or upon their premises who may desire to enter in their employment hereafter, by the use of threats, personal violence, or intimidation, or by any other means whatsoever calculated to intimidate, terrorize, and harm, or place in fear any of the employees of the plaintiffs in any manner whatsoever at or upon their premises.

And the said defendants, and all other persons confederated with them or under their direction, are hereby enjoined from marching or leading bodies of men upon plaintiffs' land to induce or coerce any of the employees of the plaintiffs to quit or abandon work in the mines of the plaintiffs as set forth and described in their said bill; and said defendants and their confederates are hereby enjoined from congregating in, upon, or about the premises of the plaintiffs for the illegal purpose of coercing the employees in said mines to quit and abandon their work in them; and the said defendants, their confederates, and those under their direction are further restrained from conducting or leading any body or bodies of men upon or upon the premises of the plaintiffs for the purpose of inducing or coercing plaintiffs' employees to quit and abandon working for the plaintiffs, or from in any unlawful manner interfering with, directing, or controlling plaintiffs' employees on their land, or from interfering with the business of the plaintiffs upon their land as set forth in the plaintiffs' said bill; and the said defendants and their confederates are hereby enjoined from going upon any part of the plaintiffs' land and premises for the purpose of intimidating, coercing, or endeavoring to prevent the plaintiffs' employees from working in their mines and upon their premises, by any improper threats, unlawful means, or agencies whatsoever; and the said defendants are further enjoined, as well as their confederates and all persons under their direction, from in any manner interfering with plaintiffs' employees while they may be passing to and from their work in said mines on or near plaintiffs' premises. But this injunction order shall not take effect until the plaintiffs, or some one for them, enter into a bond in the penalty of \$5,000, before the clerk of this court, conditioned to pay the defendants, or any of them, such damages as may accrue against them by reason of this injunction. The motion for a permanent injunction is set down for hearing at the United States courtroom at Bluefield, West Va., on the 17th day of July, 1902.

UNITED STATES OF AMERICA.

Southern District of West Virginia, ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, do hereby certify that the foregoing is a true copy of an order entered of record in said court on the 4th day of July, 1902, in the equity cause of the Blume Coal and Coke Company *vs.* Thomas Brooks et als., therein pending; and I do further certify that bond in the sum of five thousand (5,000) dollars has been given as therein directed.

Given under my hand and the seal of said court at Charleston, in said district, this 4th day of July, 1902.

Clerk C. C. U. S., S. D. W. Va.

A copy. Attest:

Clerk C. C. U. S., S. D. W. Va.

At a circuit court of the United States for the southern district of West Virginia, continued and held at Charleston, in said district, on Monday, the 28th day of July, A. D. 1902, the following order was made and entered of record, to wit:

The Gauley Mountain Coal Company *vs.* G. W. Purcell and others—in equity.

This day the complainant in this suit by its counsel presented to the court its bill of complaint against G. W. Purcell, W. B. Wilson, Chris Evans, "Mother" Jones, Charles McNelis, Pleas Claytor, Frank Austin, Joe Austin, and Joe Azzima, which is ordered to be filed; and

Thereupon the said plaintiff moved the court for an injunction as prayed for in said bill. Upon consideration whereof it is adjudged, ordered, and decreed that until the further order of the court the said defendants, and each of them, and their associates, confederates, agents, and all persons acting with them, be, and they are hereby, inhibited, enjoined, and restrained from threatening or coercing in any manner any of the miners and employees of the plaintiff, The Gauley Mountain Coal Company, because of their working for said plaintiff; and from attempting in any manner to induce, by or through intimidation, threats, force, coercion, or compulsion of any kind, any of said miners and employees to quit the service of said company or to quit working for said company; and from going upon said company's property, mines, or works, or any of them; and from annoying or harassing, or attempting to annoy or harass, in any manner any of said miners and employees while at work or while going to or returning from work or while in, at, or about their homes because of their being at work for said plaintiff, or for the purpose of inducing them to quit work; and from trespassing upon, injuring, or destroying any structures, fixtures, or any other property of the plaintiff in or upon its premises aforesaid or in or about its mines and plants, or any of them. And said defendants, and each of them, and their associates, confederates, agents, and all persons acting with them are until the further order of this court further inhibited, enjoined, and restrained from assembling, in camp or otherwise, or marching, or causing to assemble, in camp or otherwise, or march any body or company of men on the property of said company or at the mines of said company, or the residences of its employees, or so near the mines of said company or the residences of its employees, as to alarm, intimidate, or coerce said employees so as to prevent them from working in said mines; and from being a part of any such body or company of men. But this injunction shall not take effect until the plaintiff, or some one for it, shall execute bond before the clerk of this court in the penalty of \$5,000.00, with security approved by such clerk, conditioned to pay all such costs and damages as may be sustained by the defendants, or any of them, if it shall hereafter be determined that this injunction ought not to have been awarded.

And upon such bond being given, the United States marshal for said district is directed, in addition to serving copies of this order upon the defendants, to post copies thereof in and about the mines and works of said plaintiff and at such public places as the plaintiff may direct, and the motion for a permanent injunction is set down for hearing at Charleston on the 18th day of November, 1902.

UNITED STATES OF AMERICA.

Southern District of West Virginia, ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, do hereby certify that the foregoing is a true copy of an order entered of record in said court on the 28th day of July, 1902, in the equity cause of The Gauley Mountain Coal Company vs. G. W. Purcell et als. therein pending; and I do further certify that bond in the sum of five thousand dollars (\$5,000) has been given as therein directed.

Given under my hand and the seal of said court at Charleston, in said district, this 28th day of July, 1902.

EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

A copy. Attest:
[SEAL.]

EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

ORDER.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 16th day of August, 1897, the following order was made and entered of record, to wit: Charles Mackall, complainant, v. M. D. Ratchford et al., defendants in equity.

On this the 16th day of August, 1897, the complainant in this action by A. B. Fleming, his counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, his bill of complaint, alleging, among other things, that the defendants, in conjunction with other defendants in the bill named, were conspiring together to inter-

re with the operating and conducting of the coal mines operated by the Montana Coal and Coke Company from mining and producing coal in and from the said mines, and that unless the court granted an immediate restraining order preventing them from interfering with the employees of the owners of said mines there was great danger of irreparable injury, damage, and loss to the owners of said mines.

Upon the consideration whereof the bill is ordered to be filed and process sued thereon, and a temporary restraining order is allowed, restraining and prohibiting the defendants and all others associated and connected with them from in any wise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said Montana Coal and Coke Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in any wise molesting, interfering with, or intimidating the employees of the said Montana Coal and Coke Company so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Montana Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants engaged in the promotion of such unlawful combinations and conspiracies from entering upon the property of the Montana Coal and Coke Company described in this order, and from in any wise interfering with the employees of said company in their mining operations, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in the mines, or in any way advising such acts as may result in violations and destruction of the rights of the plaintiff in this property.

The motion for a permanent injunction is set down for hearing in the United States court room at Wheeling on the 20th day of September, 1897.

This injunction is not to take effect until the plaintiff, or some responsible person for him, shall enter into bond in the sum of \$5,000, conditioned to pay all such costs and damages that will accrue to the defendants by reason of the plaintiff suing out this injunction.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 16th day of August, 1897, in the aforesaid cause of Charles Mackall v. M. D. Ratchford et al. therein pending. Bond, in accordance with the foregoing order, has been given.

Given under my hand and seal of said court at Parkersburg, in said district, this 16th day of August, 1897.

L. B. DELICKER,

Clerk Circuit Court United States, District of West Virginia.

THE STATE OF WEST VIRGINIA.

To the sheriff of Marion County, greeting:

You are hereby commanded, in the name of the State of West Virginia, to summon J. W. Rea, John Burdess, P. F. Burgh, William Burdess, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hull, D. Grace, G. W. Ernst, A. W. Hamrick, N. M. Knotts, Lewis Voyle, Nich. Loss, N. McMaster, John Ruttkowski, D. C. Masch, H. Parker, W. T. Richards, John O. Reese, B. C. Rayle, James S. Kadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, A. R. Watkins, Ben Holdsworth, Jesse Soles, John Howard, John

McNeemar, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, S. P. Rowland, L. H. Hall, John E. McIntyre, Tony Franks, Elijah Freeman, E. E. Mosholder, N. L. Feathers, Robert Conaway, Marion Conaway, Charles Fortney, Charles McDaniel, Joseph Murphey, G. B. Liston, Charles Clark, B. F. Vanmeter, John S. Brannon, William Shaver, Ruben Shaver, William Davidson, William Collins, W. A. Davis, J. E. Davis, Ed. L. Davis, W. D. Mahon, James Wood, W. A. Carney, James O'Connell, W. H. Willey, Patrick Harney, George Rowe, their confederates, associates, and coconspirators, whose names are to the plaintiff unknown, to appear before the judge of the circuit court of Marion County, at rules to be held in the clerk's office of the said court on the first Monday in October, 1897, to answer a bill in chancery exhibited against them in said court by the Worthington Coal and Coke Company, a corporation duly organized and existing under the laws of the State of West Virginia.

And have then there this writ.

Witness Benjamin F. Ramage, clerk of our said court, at the court-house in said county, the 2d day of September, 1897, and the thirty-fifth year of the State.

BENJAMIN F. RAMAGE.

A copy. Teste:

B. F. RAMAGE, Clerk.

A temporary injunction granted as prayed for in the within bill, restraining and inhibiting the defendants, and all others associated and connected with them, from in any wise interfering with the management, operation, or conducting of the said mines by their owners, or others operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines. And the defendants, their associates, confederates, and coconspirators are further restrained from entering upon the property of the said the Worthington Coal and Coke Company for the purpose of interfering with the employees of the said company, either by intimidation or holding of either public or private assemblages upon said property, or from in any wise molesting, interfering with, or intimidating the employees of the said the Worthington Coal and Coke Company, so as to induce them to abandon their work in and about the said mines. And the said defendants, their associates, confederates, and coconspirators are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines along which the employees of the said the Worthington Coal and Coke Company travel to get to them, or in any way interfering with the employees of the said company in passing to and from their work, either by threats, menaces, or intimidation. And the defendants, their associates, confederates, and coconspirators are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon the said property at or near the entrance of the said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants, their confederates, associates, and coconspirators, engaged in the promotion of such unlawful combination and conspiracy, from entering upon the property of the said the Worthington Coal and Coke Company, described in this order, and from in any wise interfering with the employees of the said company in their mining operations, either within the mines or in passing from their homes to the mines, and upon their return to their homes, by menaces, threats, marching, and countermarching, or patrolling the same with the intent to intimidate and frighten the employees of the plaintiff and cause them to suspend or cease their employment with the plaintiff, and if the same be instituted, had, and done with the purpose of interfering with the business of the plaintiff, or in any wise inciting, by incendiary acts or threats, such acts as may result in violation or destruction of the rights of the plaintiff in this property.

Bond in the penalty of \$1,000, with approved security, has been given by the complainant.

Attest:

B. F. RAMAGE, Clerk.

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia:

You are commanded to summon Fred Dilcher, F. J. Weber, W. Haskins, Chris

rans, M. B. Ratchford, citizens and residents of the tState of Ohio; Eugene V. Debs, a citizen and resident of the State of Indiana; Pat Nolan, M. D. Mahon, citizens and residents of the State of Michigan; and Joseph Vitchestein, citizen and resident of the State of Pennsylvania, and all their confederates, associates, agents, and promoters, whose citizenship and places of residence are unknown, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Charleston, on the first Monday in October next, to answer a certain bill in chancery now filed and exhibited in said court against them by the McDonald Colliery Company, a corporation, a citizen of and resident in the State of West Virginia, and hereof you are not to fail, under the penalty of the law thence ensuing, and have then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 8th day of August, A. D. 1897, and the one hundred and twenty-second year of the Independence of the United States of America.

Attest:

[SEAL.]

L. B. DELICKER, *Clerk*.

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELICKER, *Clerk*.

Copy. Teste:

L. B. DELICKER, *Clerk*.

United States of America, circuit court of the United States, fifth judicial circuit and eastern district of Louisiana. United States v. The Workingmen's Amalgamated Council of New Orleans et al., No. 12143.

be President of the United States of America to the Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kier, and James E. Porter, the managing committee of said council, as such and individually, greeting:

Whereas it has been represented unto us in our said circuit court on the part of the United States in a bill in equity lately exhibited against you touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said the Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kier, and James E. Porter, the managing committee of said council, as such and individually, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from combining by violence or intimidation in any other manner to interrupt the trade or commerce among the States of the United States and foreign nations and from combining by violence and intimidation to interrupt or hinder those who are at work in conducting or carrying on the interstate and foreign commerce or who are engaged in moving the goods and merchandise which is passing through the city of New Orleans from State to State or to and from foreign countries; and that you remain inhibited and enjoined until the further order of our said court in the premises.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 27th day of March, in the year of our Lord, 1893.

[SEAL.]

E. R. HUNT, *Clerk*.

The following order was entered in the following cases by Judge Jackson after consultation with Judge Goff:

On the circuit court of the United States, district of West Virginia. James Sloan, Jr., v. Eugene V. Debs et al., in equity. Charles Mackall v. Eugene V. Debs et al., in equity. Charles Mackall v. M. D. Ratchford, et al., in equity.

On motion of A. B. Fleming, counsel for plaintiffs in foregoing cases, it is ordered that the marshal of this district do notify and warn the strikers that

marching to and fro through the company's property at any time in the above cases will be regarded as an effort to intimidate the miners of said companies, and such marching will be considered as a violation of the injunction heretofore awarded in the above cases.

J. J. JACKSON,
United States District Judge.

AUGUST 17, 1897.

ORDER.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg in said district, on the 4th day of August, 1897, the following order was made and entered of record, to wit: James Sloan, Jr., complainant, v. Eugene V. Debs et al., defendants. In equity.

On this the 4th day of August, 1897, the complainant in this action by A. B. Fleming, his counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, his bill of complaint alleging among other things that the defendant, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines operated by the Monongah Coal and Coke Company, and by such interference preventing the employees of the Monongah Coal and Coke Company from mining and producing coal in and from the said mines; and that unless the court granted an immediate restraining order, preventing them from interfering with the employees of the owners of said mines, there was great danger of irremediable injury, damage, and loss to the owners of said mines.

Upon consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed restraining and inhibiting the defendants and all others associated and connected with them from in any wise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said Monongah Coal and Coke Company, for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in any wise molesting, interfering with, or intimidating the employees of the said Monongah Coal and Coke Company so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Monongah Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies from entering upon the property of the Monongah Coal and Coke Company described in this order, and from in anywise interfering with the employees of said company in their mining operation, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in the mines, or in anywise advising such acts as may result in violations and destruction of the rights of the plaintiff in this property.

The motion for a permanent injunction is set down for hearing at the United States court room at Wheeling on the 20th day of September, 1897.

This injunction is not to take effect until the plaintiff, or some responsible person for him, shall enter into bond in the sum of \$5,000, conditioned to pay all such costs and damages that will accrue to the defendants by reason of the plaintiff suing out this injunction.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 4th day of August, 1897, in the

equity cause of James Sloan, jr., v. Eugene V. Debs et al., therein pending. Bond, in accordance with the foregoing order, has been given.

Given under my hand and seal of said court, at Parkersburg, in said district, this 4th day of August, 1897.

L. B. DELLICHER,

Clerk Circuit Court of the United States, District of West Virginia.

ALLEGHENY COUNTY, ss:

The Commonwealth of Pennsylvania to the United Mine Workers of America; Patrick Dolan, president; Edward McKay, vice-president, and William Warner, secretary and treasurer, of district No. 5 of the said United Mine Workers of America; and Patrick Dolan, Edward McKay, William Warner, Andrew Savage, Thomas Kissop, Lawrence Magdalene, John Larimer, Silas Cole, and Paul Trimmer, greeting:

Whereas on the 12th day of August, A. D. 1897, a bill in equity was filed in our court of common pleas No. 1, for the county of Allegheny, against you at the suit of the New York and Cleveland Gas Coal Company.

And whereas on the 12th day of August, 1897, the cause aforesaid came on to be heard upon a motion for a preliminary injunction, and was argued by counsel, whereupon it was ordered, adjudged, and decreed that a preliminary injunction do issue forthwith restraining and enjoining the said defendants and others associated or cooperating with them in the matters complained of in the said bill, restraining and enjoining them, and each of them, from assembling, marching, or encamping in proximity of the said mines and the houses of miners of the plaintiff company in Allegheny County, Pa., for the purpose of intimidation, menaces, threats, and opprobrious words, of preventing said miners of said plaintiff company from working in said mines; and further restraining and enjoining them, and each of them, from inducing or compelling any of the employees or miners of the said plaintiff now employed, or who may hereafter be employed, to quit their work or to leave the plaintiff's service by any threats, menace, and show of force or other intimidation. And it is further ordered that the application that this restraining order shall be made permanent shall be heard on Monday, August 16, 1897, at 10 o'clock a. m.

And it is ordered that the said complainant file a bond in the sum of \$5,000, with sureties to be approved by the court, to answer for such damages as may be lawfully suffered by the defendants by reason of this order.

Now, therefore, we command you, the said defendants, and each of you (the bond above referred to having been duly approved and filed), that you desist, and that you cause your servants, agents, and employees to desist, from doing the things specified in the order of the court. And this as you shall answer the contrary at your peril.

Witness, the Hon. Edwin H. Stowe, president judge of our said court, at Pittsburg, this 12th day of August, A. D. 1897.

[SEAL.]

A. J. MCQUITTY,
Prothonotary.

HARVEY A. LOWRY, *Sheriff.*

UNITED STATES OF AMERICA, District of West Virginia, ss:

The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are commanded to summon Eugene V. Debs and J. D. Coslett, citizens of the State of Indiana; M. D. Ratchford and W. H. Miller, citizens of the State of Ohio; W. D. Mahon, a citizen of the State of Michigan; H. B. McDonald, Hugh McDonald, and Thomas S. Owens, citizens of the State of Pennsylvania; J. W. Rea and James Wood, citizens of the State of Illinois; John Burduss, P. F. Burgh, William Burduss, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hall, D. Grace, G. W. Ernst, A. W. Hamrick, N. M. Knott, Lewis Voyle, Nich. Loss, N. McMaster, John Ruthkowski, D. C. Masch, H. Parker, W. T. Richards, G. Richards, John O. Reese, D. C. Rayl, James S. Kadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, F. L. Watson, A. R. Watkins, Hen Holdsworth, Jess Soles, John Howard, John McNeemer, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, Fleming Merrifield, S. P. Rowland, L. H. Hall, John E. McIntyre, Tony Franks, citizens of the State of West Virginia, their confederates, associates, and coconspirators, whose names are to your orator unknown, and citizens of the State of West

Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Parkersburg, on the first Monday in September next, to answer a certain bill in chancery, now filed and exhibited in said court against them by James Sloan, jr., a resident and citizen of the State of Maryland. Hereof you are not to fail under the penalty of the law thence ensuing.

And have then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 4th day of August, A. D. 1897, and in the one hundred and twenty-second year of the independence of the United States of America.

Attest:

L. B. DELICKER, Clerk.

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of September, 1897; otherwise the said bill may be taken pro confesso.

L. B. DELICKER, Clerk.

Attest:

L. B. DELICKER, Clerk.

Charles Mackall, complainant, v. M. D. Ratchford et al., defendants. In equity.

On this the 16th day of August, 1897, the complainant in this action, by A. B. Fleming, his counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, has bill of complaint, alleging, among other things, that the defendants, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines owned and operated by the Montana Coal and Coke Company, and by such interference preventing the employees of the Montana Coal and Coke Company from mining and producing coal in and from the said mines; and unless the court granted an immediate restraining order, preventing them from interfering with the employees of the owners of said mines, there was great danger of irremediable injury, damages, and loss to the owners of said mines.

Upon consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed restraining and inhibiting the defendants and all others associated or connected with them from in any wise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said the Montana Coal and Coke Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages on said property, or in any wise molesting, interfering with, or intimidating the employees of the said the Montana Coal and Coke Company so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Montana Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants engaged in the promotion of such unlawful conspiracies and combinations from entering upon the property of the Montana Coal and Coke Company described in this order, and from in any wise interfering with the employees of said company in their mining operations, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who

are engaged in working the mines from ceasing to work in the mines, or in any way advising such acts as may result in violations and destruction of the rights of the plaintiff in this property.

The motion for a permanent injunction is set down for hearing at the United States court room at Wheeling on the 20th day of September, 1897.

This injunction is not to take effect until the plaintiff, or some responsible person for him, shall enter into bond in the sum of \$5,000, conditioned to pay all such costs and damages that will accrue to the defendants by reason of the plaintiff suing out this injunction.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 16th day of August, 1897, in the equity cause of Charles Mackall v. M. D. Ratchford et al., therein pending. Bond in accordance with the foregoing order has been given.

Given under my hand and seal of said court at Parkersburg, in said district, this 16th day of August, 1897.

L. B. DELICKER,

Clerk United States Circuit Court, District of West Virginia.

A copy. Attest:

L. B. DELICKER, *Clerk.*

United States of America, circuit court of the United States, fifth judicial circuit and eastern district of Louisiana. *United States v. The Workingmen's Amalgamated Council of New Orleans et al., No. 12143.*

The President of the United States of America to the Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kler, and James E. Porter, the managing committee of said council as such and individually, greeting:

Whereas it has been represented unto us in our said circuit court on the part of the United States in a bill in equity lately exhibited against you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said The Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kler, and James E. Porter, the managing committee of said council as such and individually, your attorneys, and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from combining by violence or intimidation or in any other manner to interrupt the trade or commerce among the States of the United States and foreign nations, and from combining by violence and intimidation to interrupt or hinder those who are at work in conducting or carrying on the interstate and foreign commerce, or who are engaged in moving the goods and merchandise which is passing through the city of New Orleans from State to State or to and from foreign countries; and that you remain so inhibited and enjoined until the further order of our said court in the premises.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New Orleans this 27th day of March, in the year of our Lord 1893.

[SEAL.]

E. R. HUNT, *Clerk.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia:

You are commanded to summon Fred Dilcher, F. J. Weber, W. H. Haskins, Chris Evans, M. B. Ratchford, citizens and residents of the State of Michigan, and Joseph Vitchestein, citizen and resident of the State of Pennsylvania, and all their confederates, associates, agents, and promoters, whose citizenship and places of residence are unknown. If they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Charleston, on the first Monday in October next, to answer a certain bill in chancery now filed and exhibited in said court against them by the Harvey Coal and

Coke Company, a corporation, a citizen of and resident in the State of West Virginia, and hereof you are not to fail under the penalty of the law thence ensuing, and have then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 16th day of August, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the United States of America.

Attest:

[SEAL.]

L. B. DELICKER, Clerk.

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELICKER, Clerk.

The Dunn Loop Coal and Coke Company v. Fred Dilcher and others, in equity.

On this the 14th day of August, 1897, in chambers, the complainant in this suit, by Charles E. Hogg, esq., its counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, its bill of complaint, alleging, among other things, that the defendants named in its said bill are about to interfere with the operating and conducting of its coal plant and mines, and by such interference are about to prevent the employees of the plaintiff from mining and producing coal in and from its mines; and that unless the undersigned judge granted an immediate restraining order preventing them from interfering with the employees of the said plaintiff there was great danger of irreparable injury and damage and loss to the said plaintiff, inasmuch as the defendants are insolvent and wholly irresponsible in damages in an action at law.

Upon consideration whereof, it is ordered that the plaintiff's bill be filed with the clerk of this court at the city of Charleston, in the State of West Virginia, and that process do issue thereon; and a temporary restraining order is hereby allowed restraining and inhibiting the defendants, their confederates, and all others associated with them from in any manner interfering with the plaintiff's employees now in its employment at or upon its premises, or from in any manner interfering with any person in or upon its premises who may desire to enter its employment hereafter, by the use of threats, personal violence, or intimidation, or by any other means whatsoever calculated to intimidate, terrorize, and alarm or place in fear any of the employees of the plaintiff in any manner whatsoever at or upon its premises.

And the said defendants and all other persons associated with them are hereby enjoined from undertaking by any of the means or agencies mentioned in the plaintiff's bill from going upon the plaintiff's land to induce or cause any of the employees of the plaintiff to quit or abandon work in the mines of the plaintiff, as set forth and described in its said bill; and said defendants and their associates are hereby enjoined from congregating in or about the premises of the plaintiff for the purpose of inducing the employees of said mines to quit and abandon their work in them.

And the said defendants, their confederates and associates, are further restrained from conducting or leading any body or bodies of men up to or upon the premises of the plaintiff for the purpose of inducing or causing plaintiff's employees to quit and abandon working for the plaintiff or from in any manner interfering with, directing, or controlling plaintiff's employees on its land, or form in any manner interfering with the business of the plaintiff upon its land, as set forth in the plaintiff's said bill.

And the said defendants and their associates are hereby enjoined from going on any part of the plaintiff's lands and premises for the purpose of intimidating, coercing, or endeavoring to procure and induce the plaintiff's employees from working in its mines and upon its premises by any improper threats, unlawful means or agencies whatsoever; and the said defendants are further enjoined, as well as their confederates and associates, from in any manner interfering with the plaintiff's employees while they be passing to and from their work in said mines on and near to the plaintiff's premises.

The plaintiff's motion for a permanent injunction now made in chambers is set down for hearing in the United States court room at the city of Charleston on the 10th day of November, 1897, that being the first day of the next term thereof; but a motion to dissolve this injunction will be considered at Charles-

on on the 7th day of September next, upon ten days' notice of such motion to the plaintiff.

This injunction is not to take effect until the plaintiff, or some responsible person on its behalf, shall enter into bond in the sum of \$5,000, conditioned to pay all such costs and damages as may accrue to the defendants by reason of the plaintiff's suing out this injunction, should the same be hereafter dissolved.

Enter:

J. J. JACKSON,
United States District Judge.

To the clerk at Charleston.

AUGUST 14, 1897.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 14th day of August, 1897, in the equity cause of *The Dunn Loop Coal and Coke Company v. Fred. Dilcher et al.* therein pending. Bond in accordance with the foregoing order has been given.

Given under my hand and seal of said court, at Charleston, in said district, this 16th day of August, 1897.

[SEAL.]

L. B. DELICKER,
Clerk Circuit Court of the United States, District of West Virginia.

The McDonald Colliery Company v. Fred. Dilcher and others, in equity.

On this the 14th day of August, 1897, in chambers, the complainant in this suit, by L. G. Gaines, its counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, its bill of complaint, alleging among other things that the defendants named in its said bill are about to interfere with the operating and conducting of its coal plant and mines, and by such interference are about to prevent the employees of the plaintiff from mining and producing coal in and from its mines, and that unless the undersigned judge granted an immediate restraining order preventing them from interfering with the employees of the said plaintiff there was great danger of irreparable injury and damage and loss to the said plaintiff, inasmuch as the defendants are insolvent and wholly irresponsible in damages in an action at law.

Upon consideration whereof it is ordered that the plaintiff's bill be filed with the clerk of this court at the city of Charleston, in the State of West Virginia, and that process do issue thereon; and a temporary restraining order is hereby allowed restraining and inhibiting the defendants, their confederates, and all others associated with them from in any manner interfering with any person in or upon its premises who may desire to enter its employment hereafter, by the use of threats, personal violence, or intimidation, or by any other means whatsoever calculated to intimidate, terrorize, and alarm, or place in fear any of the employees of the plaintiff in any manner whatsoever, at or upon its premises.

And the said defendants and all other persons associated with them are hereby enjoined from undertaking by any of the means or agencies mentioned in the plaintiff's bill from going upon the plaintiff's land to induce or cause any of the employees of the plaintiff to quit or abandon work in the mines of the plaintiff, as set forth and described in its said bill; and said defendants and their associates are hereby enjoined from congregating in, on, or about the premises of the plaintiff for the purpose of inducing the employees in said mines to quit and abandon their work in them.

And the said defendants, their confederates and associates, are further restrained from conducting or leading any body or bodies of men up to or upon the premises of the plaintiff for the purpose of inducing or causing plaintiff's employees to quit and abandon working for the plaintiff or from in any manner interfering with, directing, or controlling plaintiff's employees on its land, or from in any manner interfering with the business of the plaintiff upon its land, as set forth in the plaintiff's said bill.

And the said defendants and their associates are hereby enjoined from going on any part of the plaintiff's land and premises for the purpose of intimidating, coercing, or endeavoring to procure and induce the plaintiff's employees from working in its mines and upon its premises by any improper threats, unlawful means or agencies whatsoever; and the said defendants are further enjoined, as well as their confederates and associates, from in any manner interfering with

the plaintiff's employees while they may be passing to and from their work in said mines on or near to the plaintiff's premises.

The plaintiff's motion for a permanent injunction now made in chambers is set down for hearing at the United States court room at the city of Charleston on the 10th day of November, 1897, that being the first day of the next term thereof; but a motion to dissolve this injunction will be considered at Charleston on the 7th day of September next, upon ten days' notice of such motion to the plaintiff.

This injunction is not to take effect until the plaintiff, or some responsible person on its behalf, shall enter into bond in the sum of \$5,000, conditioned to pay all such costs and damages as may accrue to the defendants by reason of the plaintiff's suing out this injunction, should the same be hereafter dissolved.

Enter:

J. J. JACKSON.

United States District Judge.

To the clerk at Charleston.

AUGUST 4, 1897.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 14th day of August, 1897, in the equity cause of The McDonald Colliery Company v. Fred. Dilcher et al. therein pending. Bond in accordance with the foregoing order has been given.

Given under my hand and seal of said court, at Charleston, in said district, this 16th day of August, 1897.

L. B. DELICKER.

Clerk Circuit Court of the United States, District of West Virginia.

A copy. Teste:

L. B. DELICKER, *Clerk.*

INJUNCTION.

In the circuit court of the United States for the northern district of Illinois.

MONDAY, April 4, 1904.

Present: Hon. Christian C. Kohlsatt, district judge.

THE AMERICAN COLORTYPE COMPANY	} No. 27168.
v.	
FRANKLIN UNION NO. 4 ET AL.	

The complainant having entered its motion for the issuance of a temporary injunction herein in accordance with the prayer of the bill, and the court having considered said bill and the affidavits in connection therewith, and it satisfactorily appearing to the court that a proper case is made for the issuance of a restraining order against the defendants pending the hearing of the motion for said injunction—

It is ordered, that the defendants, Franklin Union No. 4, Charles F. Woerner and J. M. Shea, who are, respectively, president and secretary of said Franklin Union No. 4, Michael Flannery, Norman Stuart, Charles Greene, Maurice Sanger, Andrew Carlson, Harry Gersie, C. Groves, C. Fisher, Fred Becker, M. Janette, I. Ronke, A. Berggren, Max Riggert, J. M. De La Barre, Eugene Hauck, Nick Streit, Al. Wennesten, Arthur Geng, E. Manz, A. Berg, R. Mansfield, G. Greene, Max Krause, Seymour Symers, C. Blank, Steve Mack, Charles Kunz, Paul Viehwig, Aug. Gauer, R. W. Miller, Ed. Matson, F. Bodemer, H. Bartling, Christ Senn, Leon Stapleford, A. W. Davis, Carl Andrews, and A. Blanford, and each of them, and the persons aiding or abetting or confederating with them with reference to the matters herein enjoined, be, and they are hereby, restrained and enjoined, until the hearing of said motion and until the further order of the court herein, from in any manner interfering with, hindering, obstructing, or stopping the business of said American Colortype Company, or its agents, servants, or employees, or in the operation of its business aforesaid; and also from entering upon the premises of the American Colortype Company for the purpose of interfering with, hindering, or obstructing it in any manner; and also from compelling or inducing, or attempting to compel or induce, by threats, intimidation, unlawful persuasion,

orce, or violence, any of the employees of the American Colortype Company to all or refuse to work for it or to leave its employ.

And also from preventing or attempting to prevent any person or persons, by threats, intimidation, force, violence, or unlawful persuasion, from freely entering into the service or continuing in the service of the American Colortype Company; and also from doing any acts whatever in furtherance of any conspiracy or combination to obstruct the business of the American Colortype Company or any of its officers or employees; and also from congregating or being upon or about the premises of the American Colortype Company or the streets and approaches or places adjacent thereto for the purpose of intimidating its employees or preventing or hindering them from fulfilling their duties as such employees, or of inducing or coercing by threats, violence, or unlawful persuasion any of the employees of the American Colortype Company to leave its service, or of interfering with it in any manner in the carrying on of its business in the usual and ordinary way, or in anyway interfering with or molesting any person who may be employed by or seeking employment with the American Colortype Company in the operation of its business; and also from collecting about the approaches of the place of business of the American Colortype Company for the purpose of picketing or patrolling its premises or the approaches thereto or the purpose of intimidating, threatening, coercing, or unlawfully persuading any of the employees of the American Colortype Company or persons seeking employment with it, and from interfering with its employees in going to and from their work, and from going either singly or collectively to the homes of any of the employees of the American Colortype Company for the purpose of intimidating, threatening, or unlawfully persuading them to leave its service, and from intimidating or threatening the wives and families of its employees or that purpose.

It is further ordered that the complainant file an injunction bond herein, payable to the defendants in the penal sum of \$500, with surety to be approved by the clerk of this court. And it is further ordered that the hearing of the motion for an injunction herein be, and it is, set down for hearing for the 18th day of April, 1904, at the opening of court on that day, or as soon thereafter as counsel can be heard.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division*, ss:

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the restraining order entered by the honorable Christian C. Kohlsaat in said court on the 4th day of April, A. D. 1904, in the cause wherein the American Colortype Company is the complainant and Frank-in Union, No. 4, and others are the defendants, as the same appears from the original order now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 4th day of April, A. D. 1904.

[SEAL.]

MARSHALL E. SAMPELL, *Clerk*.

Virginia—In the circuit court of Wise County.

The Norton Coal Company *vs.* John Douglas and others.

This day came the Norton Coal Company by counsel and presented to the court in vacation a bill in equity, duly verified, praying for an injunction against John Douglas and other defendants hereinafter named, on consideration whereof the court doth adjudge, order, and decree that the said John Douglas, William Webber, John Haddow, James Justice, Charles Justice, Thomas Justice, Jacob White, Charles Green, Edward Guerrant, Floyd Buttry, Thomas Bowenius Vincil, A. T. Hall, W. M. Simmons, and Josh Evans, and each of them, and all persons belonging to the association known as the United Mine Workers of America, or who may be associated with them or either of them, be enjoined and restrained from entering upon or in any manner trespassing upon the lands and premises of the Norton Coal Company at or near Banner, Virginia, in Wise County, being the lands leased by the said Norton Coal Company from the Virginia Coal Company, and now operated by the said Norton Coal Company as a mining plant at Banner, and that they be and hereby are enjoined and restrained from intimidating or threatening or coercing, or attempting to

coerce, the employees of said company, or any of them, for the purpose of making them, or any of them, join the said United Mine Workers of America, or quit work for the said Norton Coal Company, and from intimidating, threatening, or coercing, or attempting to coerce, the said company, or any of its agents or employees, for the purpose of making the said company reinstate or take back any employees who have heretofore or who may hereafter be discharged by it, and that they especially be enjoined and restrained from marching in a body, or congregating in a body, at any place within the boundaries of the said Norton Coal Company's property, leased by it from the said Virginia Coal Company, at or near Banner, in the county of Wise, whether on the land of said company, or on the railway or county road running through said property.

But this order shall not take effect until the said Norton Coal Company, or some one for it, shall execute bond in the penalty of \$1,000.00, payable to the Commonwealth of Virginia, conditioned to pay all such damages as may be incurred by the said John Douglas or any of the other defendants to this suit, or any other person, in case this injunction should be dissolved.

In testimony whereof witness the signature of the judge of said court, on this the 21st day of March, 1902.

Judge Wise Circuit Court.

To W. E. KILGORE,
Clerk of Wise Circuit Court.

The bond required by the foregoing injunction order has been given; this March 22nd, 1902.

W. E. KILGORE, Clerk.
By _____, Deputy.

Before F. A. Guthrie, judge of the circuit court of Kanawha County, in vacation.

Boomer Coal & Coke Co. vs. Frank Freeman, et al.—In chancery.

This day the Boomer Coal & Coke Company, by counsel, presented its bill of complaint, the undersigned, judge of Kanawha County circuit court, in vacation, against Frank Freeman, Jno. Cunningham, Benjamin Davis, J. A. Richards, Clark Johnson, Harve Woodrum, G. A. Purcell, William Harvey, Ed. Keeney, _____ Haptonstall, George E. Edwards, Phil Poff, Joe Hackworth, William McQuillon, Paris Hackney, and John Elmore, and their confederates and associates, and thereupon the said plaintiff moved the court for an injunction, as prayed for in said bill.

Upon consideration of which it is, until the further order of the court, adjudged, ordered, and decreed as follows:

That said defendants, and each of them, and their associates and confederates, and all persons acting with them, and their respective agents and servants be, and they are hereby, inhibited, enjoined, and restrained from threatening or coercing in any manner any of the miners and employees of the plaintiff, the Boomer Coal & Coke Company, because of their working for said plaintiff, and from attempting in any manner to induce, by or through intimidation, threats, force, coercion, or compulsion of any kind, any of said miners and employees to quit the service of said company or to quit working for said company, and from assembling or marching, or causing to assemble or march, any body or company of men in or about or within close proximity to said company's mines, property, or works, or any of them, and from being a part of any such body or company of men, and from going upon said property, mines, or works, or any of them, and from annoying or harassing, or attempting to annoy or harass in any manner, any of said miners and employees while at work or while going to or returning from work, or while in, at, or about their homes, because of their being at work for said plaintiff, or for the purpose of inducing them to quit work, and, further, from trespassing upon, injuring, or destroying any of the structures, or fixtures, or other property of the plaintiff in or upon its premises aforesaid, or in, upon, or about its mines and plants, or any of them.

But this injunction shall not take effect until the plaintiff or some one for it shall execute bond before the clerk of Fayette County circuit court in the penalty of \$1,000.00, conditioned to pay all costs and damages sustained by the defendants, or any of them, if it shall hereafter be determined that this injunction ought not to have been awarded. And upon such bond being given, the

eriff of Fayette County is directed, in addition to serving copies of this order on the defendants, to post copies thereof in and about the mines and works of said plaintiff and at such public places as the plaintiff may direct.

o J. C. FARR,

Clerk of the Circuit Court of Fayette County, W. Va.:

You are hereby directed to enter this order in vacation June 21st, 1902.

F. A. GUTHRIE,

Judge of Seventh Judicial Circuit of W. Va.

A copy. Teste:

J. C. FARR, *Clerk.*

Bond with approved security has been given as required in the foregoing order.

J. C. FARR, *Clerk.*

To the Honorable Hugh G. Kyle, chancellor, holding the chancery court at Clinton, Tennessee.

The bill of complainant of the Tennessee Coal Company, a body corporate under the laws of the State of Tennessee, having its principal office in Knox County, Tennessee, complainant, *vs.* The United Mine Workers of America, Dist. No. 19 of the United Mine Workers of America, the locals or local unions of Coal Creek and Briceville, of Dist. No. 19 of the United Mine Workers of America, John E. Smith, Louis Tino, Toby Sharp, W. A. Bolinger, J. H. Saylor, Robert Harmon, Thos. Wright, Kelley Duncan, Mac Hale, Warren Houston, A. T. Ault, Nat Sams, Dan Owens, Col. J. H. Smith, Robert Stansberry, James Dobson, Jake Hatmaker, George Bond, W. L. Cate, Noah Summa, Wm. Johnson, Thos. Duncan, Richard Garner, David Hill, John Davis, Wm. Elkins, R. M. Andrews, Kape White, Henry Harmon, James Eaves, Wm. Yowell, Jess Triplett, Noah White. — Markham, David Waltam, Taylor Brook, John Hembree, sr., John Hembree, jr., R. L. Riddings, John Hickman, Pat Irwin, Wm. Hickman, Harvey Clark, James Chavis, Mans Rolan, James Vowell, — Meadows, Jack Roberts, Joe Brown, sr., Joe Brown, jr., Abe Wilson, Henry Wilson, — Harness, Richard McGhee, Joe McGhee, — Phillips, Thos. Cooper, Chas. White, Ed Goody Kontz, Robert Morrow, John Cox, W. H. Hatmaker, Aleck Thornton, John Henderson, James Brogan, Oliver White, Ransom Cooper, Wash Massengill, Bud Smith, William Marrow, B. M. Jones, Bud Crawford, Thos. Percell, Claude Purcell, Thos. McDonald, W. E. Hatmaker, David Walton, Raut Ridding, Harry White, Monroe Black, Bart Johnson, Robert Kincaid, A. Bolinger, S. C. Wilson, M. S. Elliott, all residents of Anderson County, Tennessee, and John F. Bowden and James Vasey, residents of Marion County, Tennessee; J. S. McCracken, a resident of Knox County, Tenn.; J. C. Greis, a resident of Morgan County, Tenn.; Robert Vaughn, a resident of Hamilton County, Tenn.; F. L. Rice, a nonresident of the State of Tennessee, and a resident of the State of Iowa, defendants.

Complainants respectfully show to the court:

1st.—That it is a coal-mining company and a body corporate duly chartered and authorized by the general assembly of the State of Tennessee, with its principal office in Knox County, Tenn., and has authority under its charter to hold real estate, lease mines, minerals, etc., and mine them and transport the same, and that as such it has for the past fifteen years or more been operating a coal mine in the State of Tennessee, and now owns and operates a coal mine known as the Keystone, or Tennessee Mine, at Briceville, in Anderson County, Tennessee, and owns coal leases on more than one thousand acres of land lying and being in the fifteenth district of Anderson County, in the State of Tennessee, near the town of Briceville, which property is leased to the complainant for a number of years for mining purposes. Complainant has equipped said mines at great expense, building sidetracks, chutes, power houses, engines, boilers, ropes, cars, and mine machinery, and has spent large sums of money in opening up and developing its mines. It also owns in fee other tracts of land in the thirteenth civil district of Anderson County, Tennessee, upon which it has at great expense and outlay constructed numerous tenement and other houses for its own use and the use of its employees. The aforesaid outlay and expense of the complainants

upon its said property can only be realized on by the uninterrupted use of the same. The following is the description of the tracts of land leased by the complainant and owned by it in fee:

(a) Lease of the Tennessee Coal Company from the Coal Creek Mining & Manufacturing Co., dated the 26th day of December, 1893, for twenty-five years from the first day of January, 1894, covering the following-described property:

Being situated in the county of Anderson, State of Tennessee, and described as follows: Beginning at a small elm and corner of the Silas Burries tract, standing on the west side of the Tennessee Valley Railroad, 1.3 poles at right angles from the centre line of same; thence north 47 degrees and 55 minutes east twenty-seven poles to a stake; thence north 15 degrees west, following the line of the Shamrock Coal Company's lease, 12 poles to a rock, where formerly a white oak stood; thence same course, following aforesaid lease line, 303.6 poles to three mountain oaks on a small cliff, the seventh corner of the John B. White tract; thence, with the line of the John B. White tract, south 26 degrees and 15 minutes east, 33.5 poles to a good hickory, with white oak and chestnut pointers; thence south 33 degrees 30 minutes east 49.8 poles to a black oak and hickory on the side of the ridge; thence south 66 degrees and 50 minutes west 60.2 poles to a crooked chestnut oak; thence south 79 degrees and 15 minutes west 192.2 poles to the stake in a rock pile; thence south 72 degrees and ten minutes west 75.3 poles to a hickory, the third corner of the said White tract; thence north 2 degrees and one minute east 74.4 poles to a stake in a rock pile, and the third corner of the said White tract; thence 48 degrees and 30 minutes west 12 poles to a stake; thence south 54 degrees and 45 minutes east 590 poles to a stake in a rock pile on the south side of the Spruce Pine Ridge; thence north 59 degrees east 200 poles to a stake between two high cliffs opposite Richwebb house; thence south 59 degrees and 50 minutes east about twenty-eight poles to the centre of a line of the Tennessee Valley Railroad; thence with said railroad about 204 poles opposite to an elm, the beginning corner; thence a direct line to the beginning, containing about nine hundred and sixteen (916) acres.

(b) Lease of the Tennessee Coal Company from the Coal Creek Mining and Mfg. Co., situated in the thirteenth civil district of Anderson County, State of Tennessee:

Beginning on a large beach on the west side of the Spruce Pine Branch, about seven-eighths of a mile from the mouth of the same; thence north 49 degrees west 94.3 poles to a buckeye with chestnut and walnut pointers; thence south 41 degrees west 135.9 poles to a stake with white-oak and black-oak pointers; and thence south 49 degrees east 94.3 poles to a stake with chestnut, oak, maple, and locust pointers; thence north 44 degrees east 135.7 poles to beginning, containing eighty (80) acres.

(c) Lease of the Tennessee Coal Company from the Coal Creek Mining & Manufacturing Co., situated in the thirteenth civil district of Anderson County, State of Tennessee, on the east side of the creek, and on the west side of Middle Ridge and adjoining the lands of the lease of the said Tennessee Coal Company.

(d) The following-described tract owned by the Tennessee Coal Company in fee, situated in district 13 of Anderson County, State of Tennessee, and bounded on the west by the Tennessee Valley Railroad and on the north by J. N. Bowling and the Black Diam Coal Company; on the east by George Hill, and on the south by George Hill and George M. Lindsay.

The complainant has about 100 men in its employ in and about its said mine in Anderson County, State of Tennessee, and to fill its orders for coal the products of its mines would require a larger number of men. The demand for coal is great and additional employes are required to meet this demand.

Second.—The defendant The United Mine Workers of America is a labor union or organization. The defendant District No. 19 of the United Mine Workers of America is a subdivision of the order of United Mine Workers of America, embracing the territory and the lands and property of the complainants. The residences of the individual defendants are as stated in the caption of the complainant's bill. Defendant J. E. Bowden is the president of the defendant District No. 19 of the United Mine Workers of America. The defendant M. S. Elliott is the vice-president of said District No. 19. The defendant J. S. McCracken is the secretary of said District No. 19, and the defendants, F. L. Greis, J. C. Greis, Robert Vaughan, and S. C. Wilson, district organizers of the defendant District No. 19 of the United Mine Workers of America.

All the other defendants named in the caption of the complainant's bill, together with a large number of other persons whose names are unknown to the

complainant, are members of the local union, being subdivisions of said defendant District No. 19, embracing the district in which complainant's property is located, and is a labor union and secret organization or order.

Complainant knows nothing of its secrets, but is inferred and it charges that said order of United Mine Workers of America, and especially said District No. 19 and the local union of the same, are governed by the constitution and by-laws providing for officers and committees, and that the effect of said constitution, by-laws, officers, and committees are to bind and impress its members by solemn obligations and penalties to obey and submit to the orders, edicts, mandates, and dictation of their officers and committees, who dictate and pass upon the questions pertaining to the employment and labor of its members, and who demand of them and compel absolute and unconditioned submission to said organization, its officers, and committees, and that said organization or union dictates to its members for whom they shall work and for whom they shall not work, when they shall work and when they shall not work, and that that feature in the governing policy of said organization or union is sought to be carried to the extent not only of prohibiting its members from taking employment from any person or employer who will not recognize said union and submit to its dictation—that is to say, who will not consent to employ union but nonunion labor, and to be controlled in its employment of their labor by said union—and to order strikes on said account, and use means of an unlawful character to stop persons not members of said union from working, to prevent nonunion men from taking employment and work for employers whom the officers and committees of the organizations or unions do not approve, who may see fit to employ any other men, nonunion workmen, and refuse to be dictated to by the union, its officers, and committees, in the employment of their laborers, and from whom the employes may have withdrawn by order of the union, its officers, or its committees, or by their own voluntary acts.

Third.—Complainants show that on or about the 28th day of January, 1903, the defendant District No. 19 of the United Mine Workers of America, by its officers and committees, declared this strike against complainant and called all men working for it to quit, and that as a result of the strike being called against the complainant by said District No. 19, quite a number of its employes quit complainant's service, the complainant having at said time about 150 employes, and that said District No. 19, by its officers and committees, by threat and unlawful means as aforesaid, induced about fifty of complainant's employes to quit its service; that since said time of declaring the strike against complainant by said District No. 19 and strenuous efforts have been made to induce by force and otherwise compel complainant's employes said order of United Mine Workers of America, and become members of the local union of said District No. 19. That during all this time since the strike was declared, means of an unlawful nature have been used in order to force complainant's employes from its service and into the union; that said District No. 19, by its officers and committees, associates, confederates, and conspirators, have unlawfully conspired against complainant to injure it in the lawful prosecution of its business. Complainant would further show that the defendant United Mine Workers of America, said District No. 19 of the United Mine Workers of America, its local union, the members of the same, that its officers, committees, confederates, associates, and conspirators, except defendant Bowden, Elliott, Vasey, Wilson, and McCracken, on the night of the 21st day of May, 1903, assembled en masse at the Briceville Opera House in Briceville, Tennessee, where they remained until the early morning of May 22, 1903, when they marched to complainant's mine, about one hundred in number, many of them armed with Winchester rifles and shotguns, and by assaults, threats, and intimidation stopped and prevented complainant from entering into its mine and to their working places, and after having driven complainant's employes away, they camped on complainant's premises at its mine, taking the unlawful possession of the same, where they remained for the unlawful purpose of keeping and driving away complainant's employes until about 10 a. m. the 23rd day of May, 1903, and stayed off until the early morning of May 25th, when the defendants again unlawfully marched in force onto complainant's property, and to its mine, where the defendants again, by force, threats, and a show of numbers, intimidated and prevented complainant's employes from entering into its mine and to their work.

Your complainant, while insisting upon its rights to employ such men as it chooses, recognizes the rights of the defendants to work only for such employers as they choose, their right to strike and to decline to work for complainant

if they see proper, and complainant has no complaint on this account; and had the defendant ceased with declaring the strike and by peaceable persuasion to get complainant's employees to join their union your complainant would have no cause of complaint whatever and would not have appealed to this honorable court. However, the defendants did not stop with the declaration of the strike and of the means of peaceful persuasion, but have resorted to unlawful methods, as hereinbefore stated, and the complainants charge that the aforesaid transgressions and unlawful acts have been done for the unlawful purpose of injuring complainant in its business and to force its employees to join the defendant's union, and to coerce complainant to accede to its demands, to recognize the union and force it to employ none but union men in its mines. Complainant further charges that these acts on the part of the defendant constitute an unlawful conspiracy and that the same has greatly injured complainants in carrying on its legitimate business under its charter, the right which the principal guaranteed to it under the laws of the land in making such contracts as it sees fit for the employment of such persons as desire to enter its employment, without regard to their affiliation with the labor union of the defendant.

Fourth.—Complainant avers that there is a great demand for the product of its mine, and by the reason of the unlawful act aforesaid by the defendant it is unable to fill its contracts and orders, and that unless the defendants are inhibited and enjoined from interfering with complainant's operations in the employment of necessary miners it will suffer irreparable losses and injury, as there is no adequate and speedy remedy at law by which its rights and interests can be protected.

Fifth.—Complainant specifically avers and charges that the defendants have been and still are illegally and wrongfully conspiring, combining, and confederating together, intimidating, conspiring, hindering, assaulting, and threatening those in the employ of the complainant; that the defendants, their agents, servants, associates, its officers, organizers, and conspirators and representatives have conspired, combined, and confederated, and are now conspiring, combining, and confederating, for the unlawful purpose to injure the complainants in its business. And its employees, by the intimidation of the miners working in its employ, by gathering in threatening crowds in the neighborhood of the complainant's mine, coming upon complainant's premises at its mine by threatening with violence the employees of the complainant, by inducing them to break their employment with complainant, to quit its employment, thus injuring the complainant in its business and preventing it from carrying on the same, and that if such unlawful acts are allowed to be continued the business carried on by complainant will be seriously injured, if not ruined.

Premises considered, complainant prays that the defendants named in the caption be made such by due words and apt process of service of subpoena, requiring them to answer this bill fully and particularly, but not under oath, their several answers under oath being specifically waived.

2nd. That a writ of injunction issue and be served on all of defendants, enjoining each and every one of them and their associates, conspirators, and confederates, and all others that may act in concert with them or by their direction from interfering with the employees or agents of complainant now in its employ, or with any persons desiring to enter its employment, by way of threats, intimidation, personal violence, or other unlawful means, calculated or intended to prevent such persons from entering or continuing in complainant's employment, or to induce any such persons to leave the employment of complainant, or otherwise induce any persons in its employment to leave its employ, from interfering with, intimidating, molesting, or threatening in any manner any person or persons for the purposes of inducing such person or persons not to work for complainant; from congregating or loitering about in the neighborhood of complainant's premises, or at any other place or places in such manner as to unlawfully interfere with the complainant's employees or with the prosecution of its business, or to unlawfully obstruct complainant's trade; from picketing and patrolling its mines, leases, or premises, or the homes or stopping places of its employees, or the approaches or entrances thereto, or loitering in or about any other places named, or making loud or boisterous noises in the vicinity thereof, in such manner as to intimidate or unlawfully interfere with the complainant's officers, complainant's employees, business, or property; from unlawfully interfering with the free access of the complainant's employees to its mines and to their working places and their homes, or their families, and a free, unmolested going and coming of complainant's employees to and from their work, from places of their business, or their home, by concerted action or

berwise doing any unlawful act or causing any annoyance which will unlawfully interfere in any manner with complainant or its business or its property, and from giving any instructions or orders to committees, or its members, or associates, confederates, or conspirators, for the performance of any such unlawful act or threats whatsoever, obstructing or interfering with the free and unobstructed operation of complainant's business, or its present or future employees.

3rd. That on the hearing said injunction be made perpetual, and that complainant have a decree against the defendant for damages resulting from their wrongful act.

4th. That complainants may have all such other, further, and general relief as it may in equity be entitled to receive at the hearing.

This is the first application for the writ of injunction in this cause and behalf.

TENNESSEE COAL COMPANY,
By HENRY L. MCCLUNG, *Sol.*

D. A. WOOD,
WEBB, MCCLUNG & BUTLER, *Sols.*

STATE OF TENNESSEE,
Anderson County:

Personally appeared before me, the undersigned authority, E. F. Buffatt, who takes oath that he is the agent of the complainant in the foregoing bill, and that the statements therein made as of his own knowledge are true and those made on information he believes to be true.

E. F. BUFFATT.

Sworn to and subscribed before me this 25th day of May, 1903.

J. C. SCRUGGS, *C. & M.*

STATE OF TENNESSEE,
County:

to the Clerk and Master at Clinton:

Let an injunction issue as prayed for in the foregoing bill on complainant's securing injunction bond as required by law in the sum of \$1,000.00.

May 25, 1903.

HUGH G. KYLE, *Chancellor.*

WRIT OF INJUNCTION.

THE COMMONWEALTH OF PENNSYLVANIA,
Somerset County, ss:

to Andrew J. Coleman, high sheriff of Somerset County, Pa., greeting:

Whereas it has been represented unto us at our court of common pleas for the county of Somerset, in a certain cause there pending, wherein the Somerset Coal Company is complainant, and you, the said Daniel Young, Charles Walker, Francis J. Drum, Mark M. Smith, Robert Salmond, William Morgan, William McCullough, Thomas Haggerty, James Zelinski, Barney J. Palmer, and John Blatnick, all of whom are district officers and organizers of the sixteenth district of the United Mine Workers of America, the officers, their successors, and members of local unions Nos. 606, 2003, 610, 27, 888, 1731, 291, and Grassy Run local No. —, all of the United Mine Workers of America are respondents, on the part of the said complainant, that you, Daniel Young, Charles Walker, Francis J. Drum, Mark M. Smith, Robert Salmond, William Morgan, William McCullough, Thomas Haggerty, James Zelinski, Barney J. Palmer, John Blatnick, the officers, their successors, and members of local unions Nos. 606, 2003, 10, 27, 888, 1731, 291, and Grassy Run local No. —, that you, the defendants, are conspiring together to interfere with the operating and conducting of the coal mines operated by Somerset Coal Company and by such interferences preventing the employees of the Somerset Coal Company from mining and producing coal in and from the mines belonging to and operated by Somerset Coal Company, and preventing any person or persons who desire to offer or enter its employ, and that unless the court grant an immediate restraining order, preventing you from interfering with the employees of the owners of said mines and those who desire to enter its employ, there was great danger of irreparable damages and loss to the owners of said mines.

We therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said respondents, your agents, employees, and servants, as well as all persons combining and conspiring with you, your associates and confederates, and all other persons whomsoever known or unknown, be hereby restrained and enjoined and commanded absolutely to desist and refrain from, in any way or manner, interfering with the employees of the plaintiff, and with any person or persons who may hereafter desire or offer to enter its employ by the use or way of threats, intimidation, personal violence, opprobrious epithets or ridicule, or other means, calculated or intended to prevent such persons from entering or continuing in the employ of the complainant, or calculated or intended to induce any such person or persons to leave the employment of the plaintiff; and also from calling "scab" or "scabs," or any other opprobrious epithets to persons passing along the public streets or highways, and going to or from the works of the plaintiff, and who are in the employ or about to enter the employ of the said plaintiff, from picketing and loitering upon the premises of the plaintiff, or congregating about or in the neighborhood of the same, or on the highways of Somerset County, or any of the streets of any town, village, or borough of the said county, for the purpose of intimidating or interfering with the employees of the plaintiff, or with such persons who desire to enter its employ; from individually or collectively boarding incoming or outgoing trains or cars with the object or purpose of inducing men who are in the employ of the plaintiff to quit work, or of preventing, or attempting to prevent, any person or persons who may desire to enter its employ from so doing, by means of threats, intimidation, or undue pressure; from giving any orders or directions to committees, associates, or otherwise, for the performance of any such acts or threats hereby enjoined, from in any manner whatever impeding, obstructing, or interfering with the regular and unrestrained operation, conduct, and management of the business of the plaintiff, or the employees now in the employ of the plaintiff, or that may hereafter be employed by it.

It is further ordered that the aforesaid injunction shall be enforced and binding upon all the defendants named in the bill, your associates, confederates, and upon all other persons whomsoever who are not named therein, from and after the time when such other persons shall have knowledge of the entry of this order and the existence of this injunction.

And this injunction shall be taken as dissolved, in accordance with the equity rules, unless motion to continue be made on or before the 28th day of January, 1904.

Witness the honorable Francis J. Kooser, president judge of our said court, at Somerset, the 18th day of January, in the year of our Lord one thousand nine hundred and four.

N. E. BERKEY, *Prothonotary*.

INJUNCTION—DISCHARGE OF EMPLOYEES BECAUSE OF MEMBERSHIP IN LABOR UNION—BLACKLIST—*Boyer et al. v. Western Union Telegraph Company, United States Circuit Court for the Eastern District of Missouri, Eastern Division, 124 Federal Reporter, page 246.*—This is a bill brought by Boyer and others to procure an injunction against the Western Union Telegraph Company, prohibiting the discharge of employees on account of membership in the Commercial Telegraphers' Union, and also prohibiting the maintenance by said company of a blacklist. The bill also alleged that the company had conspired to destroy the Telegraphers' Union. The injunction was denied. The points involved were discussed in the following manner by Judge Rogers, who delivered the opinion of the court:

The first cause of complaint is that plaintiffs have been discharged without notice from the service of the defendant for no other cause than that they joined that union. But the answer to that complaint is that in a free country like ours every employee, in the absence of contractual relations binding him to work for his employer a given length of time, has the legal right to quit the service of his employer without notice, and either with or without cause, at any time; and in the absence of such contractual relations any employer may legally discharge his employee, with or without notice, at any time. The second ground for complaint is that defendant, its officers and agents, have unlawfully combined and confederated together to destroy the said union, and intend discharging all the members of said union from the service of the defendant, and by threats, intimidation, and coercion, and otherwise, are interfering with the plaintiffs and with others of their employees for uniting with the union, and are seeking to prevent those discharged from obtaining employment.

I need not take time to multiply authorities to show that there is no such thing in law as a conspiracy to do a lawful thing. If the last allegation means anything, it is that the defendant, its officers and agents, have conspired to destroy the union by discharging all its members in its employ, and refusing to employ others, solely for the reason that they were members of the union. But it is not unlawful, in the absence of contractual relations to the contrary, to discharge them for that or for any other reason, or for no reason at all. Hence there is no such thing in law as a conspiracy to do that, and it matters not whether you call such an agreement a conspiracy, a combination, or a confederation.

True, it is alleged that defendant, its officers and agents, unlawfully combined and confederated to destroy the union. But what is unlawful is a question of law; whether a thing done is unlawful depends on what is done or threatened to be done. But what the defendant company, its officers and agents, combined and confederated to do in order to destroy the union, is the precise thing the complaint fails to show. The court must always be able to look at the facts and say at if these facts are true they are illegal; otherwise there is no ground for invoking its protective agency.

But it is said that defendant maintains a blacklist containing a list of names of such persons as may have incurred its displeasure and have been discharged from its service, and that, by methods not known to them, it prevents such discharged persons from getting employment as telegraph operators; that they are blacklisted people solely because they belong to the union, and that they tend to blacklist others for the same thing, etc. We have seen it is not unlawful to discharge plaintiffs because they belong to the union. Is it unlawful for defendant to keep a book showing that they were discharged because they belong to the union? The union presumably, and especially in view of the allegations in the bill, is an honorable, reputable, and useful organization, intended to better the conditions and elevate the character of its members. Is it illegal for defendant to keep a book showing that it had discharged members of such a union solely because they belong to it? That seems to be the real essence of the bill.

Is it illegal to notify others that it keeps such a book and that they can inspect it or to inform others what such a book shows? That seems to be the ground of complaint. There can be no question about it; the positive, direct, and unqualified allegation is that defendant keeps such a book; that plaintiffs are discharged on it solely because they belong to the union, and have been discharged solely because they did belong to the union. Can a court of equity grant relief to a man who says for his cause of action that he belongs to a reputable organization, and that he has been discharged solely because he did belong to it; that his employer who discharged him keeps a book on which is placed his name, and sets opposite thereto the fact that he discharged him solely because he belonged to such organization; and that he gives that information to other persons, who refuse to employ him on that account?

Suppose a man should file a bill alleging that he belonged to the Honorable and Ancient Order of Freemasons, or to the Presbyterian Church, or to the Grand Army of the Republic; that his employer had discharged him solely on that account; that he had discharged others of his employees, and intended to discharge all of them, for the same reason; that he kept a book which contained the names of such discharged persons, and set opposite the name of each discharged person the fact that he had been discharged solely on the ground that he belonged to such organization; and that he had given such information to others, who refused to employ such persons on that account. Is it possible a court of equity could grant relief? If so, pray, on what ground? And yet that is a perfectly parallel case to this as made by the bill.

Circuit court of the United States, district of Pennsylvania. In equity.

THOMAS C. PLATT V. PHILADELPHIA AND READING RAILROAD COMPANY ET AL.

Suggestions respecting questions raised by petitions of Hicks, Riley, and other members of the Brotherhood of Railroad Trainmen. The pendency of this petition having been incidentally brought to my attention, the issues raised impressed me as of great gravity and importance, not only as between the parties immediately concerned, but as regards the country at large. In that view—in which I could not doubt the court would share—it seemed to me that the court could not object to a brief discussion if the case from a public point of view

merely and uninfluenced by the wishes and interests of the particular litigants before it. Upon this suggestion being made to the court it was most cordially assented to. The considerations following, therefore, are submitted by me as *amicus curiæ* merely and by express leave of the court.

I.—THE FACTS.

The material facts may be briefly stated. The petitioners are members of the Brotherhood of Railroad Trainmen. Some of them have been members for seven or eight years—have each year paid annual dues and assessments which now amount to considerable sums of money—and by continuing their membership will, in case of death or permanent disability, become entitled by themselves or their representatives to large pecuniary payments from the funds of the Brotherhood. On the other hand, by ceasing to be members, they lose all benefit from assessments and dues already paid and forfeit all claims upon the Brotherhood treasury.

The constitution and rules of the Brotherhood and of the subordinate lodges are before the court as part of the petition. No controversy or antagonism has ever arisen or existed between the Reading Railroad and the Brotherhood or any of its lodges, or between the Reading Railroad and any members of the Brotherhood as such members. If, as is claimed, the Reading Railroad has for some years adopted the rule that it would not have in its service any member of a labor organization, it is a rule which has not been uniformly nor invariably acted upon, since there has been a Philadelphia lodge of the Brotherhood on the Reading line for nearly eight years, and its existence can not have been unknown to the Reading officials. What has now happened and what has led to the present petition is this: The Reading receivers have notified the members of the Brotherhood on its line that unless they cease to be such members they will be discharged from their present employment on or before October 8. The receivers make no complaint of the manner in which the Brotherhood employees discharge their respective duties. The notice has been given simply because of said employees' membership of the Brotherhood, as is conclusively shown by the following telegram received by Grand Master Wilkinson in reply to his remonstrance against the course proposed to be taken:

"The policy of the company is well known to be that it will not consent that persons in its service shall owe allegiance to other organization which may make claims upon them which are incompatible with their duties to their employers. This position was taken advisedly, and we have no intention of departing from it. (Signed) Joseph S. Harris, Prest. and Receiver."

Thus, if the receivers are right and their rule is to prevail, membership of the Brotherhood by and of itself incapacitates for service on the Reading Railroad. It is respectfully submitted that the receivers are wrong, and that the action proposed by them ought not to be sanctioned by the court.

II.—QUESTION BEFORE THE COURT.

It will help to make plain the precise question before the court to note the opening words of the telegram just quoted. "The policy of the company is well known to be, etc." Mr. Harris, who signs the telegram both as president and receiver, evidently forgets that the company is no longer in control, that it can have no present policy on the subject, and that what its past policy was is of slight consequence.

The Reading Railroad being now in the hands of receivers, the receivers and all the employees of the company are officers of the court. The court, therefore, and not the company, is the employer of all the persons engaged in the operation of the road. The present policy of the court, and not the past policy of the company, is the material thing to be considered. And hence the precise question is, Will the court now lay down the rule that the members of the Brotherhood of Trainmen, because they are such members, be discharged from the service of the road?

III.—STRIKES ARE NOT NECESSARILY UNLAWFUL.

The court, it is submitted, ought not and can not lay down any such rule on the ground that either the purposes and objects of the Brotherhood, or the means by which they are to be obtained, are shown to be illegal.

1. The general purposes and objects of the Brotherhood are stated in the preamble to the constitution, as follows:

"To unite the railroad trainmen; to promote their general welfare and advance their interests, social, moral, and intellectual; to protect their families by the exercise of a systematic benevolence very needful in a calling so hazardous as ours, this fraternity has been organized.

"Persuaded that it is for the interests both of our members and their employers that a good understanding should at all times exist between the two, it will be the constant endeavor of this organization to establish mutual confidence and create and maintain harmonious relations.

"Such are the aims and purposes of the Brotherhood of Railroad Trainmen."

Certainly these objects must be regarded as laudable in the highest degree and as deserving the approbation and support of every good citizen. They are indeed practically the same as those for which working people are expressly authorized to incorporate themselves by act of Congress, the statutory description of such objects being—

"For the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit."

2. If the means to these praiseworthy ends be now examined, there is nothing in them to which the most captious critic can object except the provisions made for strikes.

It is well to note that even these provisions are of an eminently conservative character; that great care is taken to guard against the abuse of a weapon which is a two-edged sword and generally proves as damaging to those who use it as to those against whom it is used.

Thus, by the Brotherhood constitution and rules, a strike does not take effect till approved first by the local grievance committee, second by the general grievance committee, third by a board of adjustment, and fourth by a grand master, with the consent of two-thirds of the members involved; while striking or inciting to strike except in accordance with the above rules is punished by expulsion from the Brotherhood.

3. Nevertheless, among the means of accomplishing the ends of the brotherhood is the bringing about of a "strike." As to what a "strike" is is not defined by the Brotherhood constitution and rules; its precise nature must be determined by the court. And, as the Brotherhood is entitled to the ordinary presumption of lawfulness for its methods as well as its objects until the contrary is shown, the court will hold the thing termed "strike" in the Brotherhood constitution and rules to be something lawful unless there can not be such a thing as a lawful "strike."

4. But whatever may be the customary or probable incidents or accompaniments of a strike, it can not be ruled that there is no such a thing as a legal strike—that every strike must be unlawful.

The necessary elements of a strike are only three—(1) the quitting of work (2) by concert between two or more (3) simultaneously—and in and of themselves involve no taint of illegality.

A strike becomes illegal when to these necessary features are added others, such as malicious intent, followed by actual injury, intimidation, violence, the creation of a public nuisance, or a breach of the peace of any sort.

5. But it is unnecessary to elaborate the proposition that a strike is not necessarily unlawful, since it is emphatically sustained by the recent decision of the circuit court of appeals in *Farmers' Loan and Trust Company v. Northern Pacific Railroad Company*, just decided in Chicago. And it is hardly necessary to point out that the attending circumstances, which only too often makes strikes unlawful, are none of them provided for by the Brotherhood constitution and rules and can not therefore be assumed to be necessary incidents of any strike occurring pursuant to them.

IV.—RIGHT OF LABOR TO ORGANIZE.

If the rule that a member of the Brotherhood of Railroad Trainmen shall not work on the Reading Road can not be justified because of anything inherently unlawful in the constitution and rules of the Brotherhood, the only remaining ground on which it can be defended is that of business expediency.

Discretion of the court.—That question is presented because in operating the Reading Railroad so as to secure the best results for the public and all private parties interested, the court is unhampered by any express statutory provisions and has all the liberty of choice belonging to employers generally.

It is conceivable, therefore, though the spectacle would be a curious one, that a court of the United States may, on business grounds, refuse employment to persons for no other reason than their membership of an association whose purposes the laws of the United States expressly sanction.

It is conceivable also that a court of the United States, also on business grounds, may attach to employment by its receivers a condition which employers of labor generally in very many States of the Union are prohibited from imposing under penalty of fine and imprisonment.

But it is safe to say that the considerations of business policy impelling the court to the course suggested should be of the clearest and most cogent character, and that the question presented is one which the court will recognize as of the greatest interest and importance.

Scope of the question.—It involves the right of labor to organize for the settlement of differences between it and capital, whose right to organize is apparently not denied.

How the ordinary employer of labor may answer such a question, whether mistakenly or otherwise, is of comparatively little consequence.

Effect of a wrongful decision.—But when the court is the employer any mistaken decision may work infinite mischief, both because until corrected it lays down a rule of action for other like cases and because so far as the mistake is recognized it impairs the confidence of either the employer or the employed, or both, in the impartiality or capacity of the judiciary.

Business expediency.—In considering the question of the business expediency of the employment of Brotherhood men, such objection as there is to it must arise from the fact that under its constitution and rules the employees may engage in a strike, with all the natural and possible incidents and consequences. It can hardly be denied that otherwise the Brotherhood organization is not only not objectionable, but is salutary in its operation, both as regards the employers and the employed. It is the strike feature and that alone which, from a business point of view, can induce the court to brand the Brotherhood men as unfit for its service. It is submitted that that feature should not be allowed to have that effect for various reasons.

Risks of a strike not obviated by excluding organized labor from employment.—It should be remembered, in the first place, that the risks of a strike are not obviated by excluding the members of the Brotherhood from the receivers' service. Men deeming themselves aggrieved and seeking relief or redress, though not associated in any formal way or for any general purposes, may easily unite for the single purpose of a strike. In that view the Brotherhood constitution and rules may well be regarded as operating in restraint of strikes. By compelling the question of strike or no strike to be acted upon affirmatively by four or five different and independent tribunals, they certainly tend to prohibit a strike that is rash, or reckless, or for other than weighty cause. Let it be borne in mind in the same connection that when a railroad or any other business concern is operated by receivers, the violence and lawlessness and other abuses of a strike are both less likely to develop than in other cases, and, if developed, are much more readily dealt with. Employees who understand they are officers of the court will be slow to antagonize its authority, and if they do can be summarily controlled and punished through the process of contempt.

Organized labor improves the service.—While, therefore, under the circumstances of the present case, the possible evils of a strike would seem to be minimized, it should not be forgotten, in the second place, that the receivers' proposed remedy, to wit, a rule excluding or discharging from service any and all members of the Brotherhood, is itself open to serious objections and disadvantages. The best service is not to be expected from employees who smart under a sense of injustice and are in a chronic state of discontent. Yet such is the inevitable condition of employees whose right to organize for mutual protection and benefit is attacked and whose opportunity to labor is conditioned

pon the sacrifice of that right. They can not help noting that organized capital is not so restricted. And when treatment so apparently unfair and discriminating is administered through the instrumentality of a court, the resulting discontent and resentment of employees are inevitably intensified, because the law itself seems to have got wrong and in some unaccountable manner to have taken sides against them.

Thus the mischiefs apprehended from membership of the Brotherhood by the receivers' employees lie wholly in the future and are as small as is possible in the nature of things, while the mischiefs to arise from enforcing the receivers' proposed rule are real and immediate. Whether and how far they may be regarded as offsetting one another need not be discussed. The rejection of the proposed rule may reasonably be expected to be attended with such substantial advantages that the court can hardly hesitate as to the course which sound business policy dictates.

Advantages of labor organizations.—To begin with, not the least of such advantages is the avoidance of the necessarily invidious, if not illegal, position that a man shall go without work unless he give up a legal right—a right he may properly deem essential to his safety and welfare.

A correlative advantage is the conciliation of the employed through the full recognition of their rights and the clear indication of an honest purpose that no injustice to them is meditated.

Another advantage is the practical proof thus given that the greatest social problem of the day and the phase it has now assumed are fully appreciated. Whatever else may remain for the future to determine, it must now be regarded as substantially settled that the mass of wage-earners can no longer be dealt with by capital as so many isolated units. The time has passed when the individual workman is called upon to pit his feeble single strength against the might of organized capital. Organized labor now confronts organized capital—they are set off when friends, but are inevitably often at variance; as antagonists either can afford to despise the other—and the burning question of modern times is, How shall the ever-recurring controversies between them be adjusted and terminated? If the combatants are left to fight out their battles between themselves by the ordinary agencies, nothing is more certain than that each will inflict incalculable injury upon the other; while, whichever may triumph will have won a victory only less disastrous and less regrettable than defeat.

Arbitration—the court as arbitrator.—No better mode for the settlement of contests between capital and labor has yet been devised or tried than arbitration; and another crowning advantage of the course of action here advocated is that arbitration as the mode of settling differences between capital and labor must necessarily be applied in the course of the receivership and arbitration in its best and most effective form. The court, by appointing receivers, constitutes itself not only an employer of labor, but the arbitrator of all disputes between it and the receivers, who may justly be regarded as representatives of capital. It occupies the dual capacity of employer and arbitrator, naturally and inevitably. It is an arbitrator whose wisdom and impartiality are—certainly should be, and must be assumed to be—beyond suspicion. It is an arbitrator capable of acting rapidly and summarily, if need be, and invested with power to enforce its own awards. It is an arbitrator with whom both parties have reason to be satisfied, both from its character and its ability to make its award effective, and might well be expected to furnish, should circumstances permit or require, a conspicuous object lesson illustrative of the value of the arbitration principle.

In short, the question being whether business policy requires the court to approve the rule that a member of the Brotherhood of Railroad Trainmen is *pro facto* ineligible as an employee of the receivers of the Reading Railroad and an officer of the court, the conclusive considerations against the rule may be summed up as follows:

CONCLUSIONS.

1. The rule is of doubtful value as a preventive of strikes, because it leaves employees to act upon impulse and from passion and freed from the restraints of the Brotherhood regulations.

2. The rule is of doubtful value when the court is the real employer, both from the reluctance of the employed to defy the court's authority and from the power of the latter to speedily and summarily vindicate it.

3. The rule is of positively injurious tendency in the disaffection and discontent engendered among employees by the denial to them of rights enjoyed by citizens generally and deemed necessary for their security and comfort.

4. The repudiation of the rule, on the other hand, has the positive merit—

(a) Of tending to secure for the service the good will of employees, and thus promoting its efficiency;

(b) Of recognizing the real conditions of the capital and labor problem and the fact that labor both has the right to organize and is organized;

(c) Of illustrating the working under the most favorable auspices of the principle of arbitration as the means of adjusting the differences between capital and labor;

(d) Of demonstrating that there is not one law for one class of the community and another for another, but the same for all, and of thus tending to preserve for the law and for the judiciary by which it is administered that general respect and confidence which have always been a marked characteristic as well as excellence of our institutions.

RICHARD OLNEY.

Platt v. Philadelphia and Reading Railroad Company et al., 65 Fed., 660. (Circuit court, eastern district of Pennsylvania. November 27, 1894.)

This was a petition by Levi Hicks and others, employees of the receivers appointed in the main cause, for directions to such receivers.

Francis Rawle and Day & Montague, for petitioners.

Samuel Dickson and Thomas Hart, jr., for receivers and railroad company.

DALLAS, Circuit Judge. The subject-matter of this litigation was first brought to the attention of the court by the joint petition (filed October 8, 1894) of Stephen E. Wilkinson and Thomas McDermott and George H. Ruppel, "acting for themselves and all employees of the Philadelphia and Reading Railroad Company, who are members of an unincorporated voluntary association called the 'Brotherhood of Railroad Trainmen.'" The object of the proceeding was to obtain an order restraining the receivers from acting in pursuance of a notice which had been issued by them, and which is referred to in the petition as follows:

"On or about the 15th day of August last your petitioners were notified that all members of said association must dissolve their connection with the same on or before October 8th instant, or, failing to do so, would be discharged from the service of the receivers."

The receivers filed an answer to this petition, wherein they stated that Stephen E. Wilkinson was unknown to them; that George H. Ruppel had been employed by them only about one week before the petition was filed, and that he had, as part of his application for employment, declared in writing that he was not, and if employed by the receivers would not become, a member of any labor organization; and that the similar written declaration of Thomas McDermott was supposed to have been destroyed by fire, and unless it should be found there was no present intention of dismissing him. Upon the presentation of the case thus made it was admitted that Stephen E. Wilkinson was not in the service of the receivers, and, indeed, from the petition itself it appears that his supposed right of interference was based solely upon the ground that he is "the chief executive officer of the association known as the 'Brotherhood of Railroad Trainmen.'"

I, however, then thought, as I still think, that neither that association nor he as its chief officer had any legal standing to be heard in complaint of any action taken or proposed by the receivers, or to invoke or advise the court's disallowance of any measure adopted or contemplated by them in the performance of the duties assigned to them. They have made no contract with or through this association, and none had been so made by the company. All contracts of hiring or employment have been made directly with the men employed, and Mr. Wilkinson, personally or officially, is a stranger to them. He or the association which it may be assumed he represents has in law no more connection with them or with the relation which they create than has any other person or organization whatsoever. His participation in the proceeding was therefore voluntary and without interest, and his inclusion as a party to the petition was not a mere misjoinder; it was without color of right. As to the remaining petitioners, the case, in view of the matters set up by the answer, was not pressed, and it is clear that it could not, as to either of them, have been persisted in with success. It could not have been reasonably insisted that the receivers should be compelled to continue Mr. Ruppel in their employment notwithstanding the fact that he had obtained admission to it by making

a declaration which was either not true when made or was immediately afterwards falsified, and the disclaimer of intention to discharge Thomas McDermott of course ended the matter as to him.

The original proceeding having been thus terminated, it was, in strictness, incapable of revival by the introduction of new parties plaintiff, and the averment as to them of a different state of facts. But as no matter of substance demands the enforcement of this principle of equity pleading, and as the objection was not insisted upon when it would have been pertinent, it may well be waived now. The fact is that leave was asked, and was granted, to file an intervening petition; and accordingly (October 8, 1894) the petition of Levi Hicks was filed, wherein it is alleged that he is an employé of the receivers, and is a member of the Brotherhood of Railway Trainmen, and, upon information and belief, that the statements contained in the preceding petition are true. This petition was amended on October 27, 1894, and again on November 13, 1894. The answer to it, as at first presented, was filed on October 12, 1894; and the first amendment was answered on November 5, 1894, and the second amendment on November 19, 1894. The petition of George S. Riley was filed on October 27, 1894, and the answer of the receivers thereto was filed on November 5, 1894.

Upon the application of the counsel for the petitioners the case was assigned for hearing and on the day appointed was fully argued. The case having been thus heard on the petitions as amended, and the several answers thereto, the answers are to be taken as true (2 Daniell, Ch. Prac., p. 932); and applying this rule to the cases of Levi Hicks and George S. Riley, the facts before the court, so far as deemed to be material, may be concisely stated. Both of these persons are in the service of the receivers, and both are members of the unincorporated association known as the "Brotherhood of Railway Trainmen." A rule was adopted by the railroad company in the year 1887, and has since been maintained by it and by the receivers, to the effect that no one would be employed in its service who was a member of such an association, unless he would agree to withdraw therefrom. Levi Hicks was employed as brakeman on October 20, 1893.

The established form of application representing that the applicant was not a member of any labor organization, or that if such a member, he would withdraw therefrom, was presented to him for signature, and thus the rule above mentioned was especially brought to his notice; but he then declined to state whether or not he was a member of such an organization, and thereupon he was employed, but by a subordinate agent of the receivers, and without their knowledge or that of their general superintendent. On or about August 15, 1894, he was notified by the latter that, unless he would give up his membership in the Brotherhood, he would be discharged. He still, however, retained both his membership and his employment, and on October 8th, the day on which his original petition was filed, and after it had been presented, the general superintendent had an interview with him and others of the employed, at which "no threat was made of discharge, but reference was made to the agreements under which the men had entered the service of the company, and to the rules of the company, and they did agree to withdraw." The proposed discharge of George S. Riley has no connection with his membership in the Brotherhood of Railway Trainmen, but is caused solely by his failure to satisfactorily perform his duties.

The circumstances disclosed in the case of Levi Hicks do not entitle him to the interposition of a court of equity on his behalf. Without advertent upon his participation in the equivocal and exceptional means by which he secured his present employment, it may, at least, be said that his assumption that the fact that he so secured employment imposes upon the receivers an obligation to retain him in it ought not to be sustained. Even if they should not be permitted to dismiss an employee because of a fact known to them when they employed him, still they should not be compelled to keep in their service one who, without their knowledge, entered it in conscious violation of a long-established regulation, though with the connivance or negligent assent of some minor official. The notice of August 15, 1894, was therefore rightfully given, and should have been regarded.

The receivers had done nothing which, upon any reasonable ground, could be set up to deprive them of that freedom of action which, in such matters, employers and employed are alike and always at liberty to exercise. When unaffected by contractual obligation, the right to determine their personal relations pertains to all men, and is no less inviolable than is their right to form them according to their own will and pleasure. Mr. Hicks might certainly

leave the service of his employers for any cause or without cause, and I know of no principle upon which the like privilege could be denied to them. As was said by Mr. Justice Harlan in *Arthur v. Oakes*, 11 C. C. A., 209, 63 Fed., 317:

"It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. The rule, we think, is without exception that equity will not compel the actual, affirmative, performance by an employe of merely personal services any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employe, engaged to perform personal service, to quit that service, rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages, and a court of equity will not indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day, or the affirmative acceptance, of merely personal services."

The promise made by Mr. Hicks after his petition had been filed may have been, and probably was, influenced by a desire to assure his retention of his place notwithstanding his failure to respect the notice of August 15th, but it was not induced by any threat then made, nor does it appear that his participation in this proceeding was objected against him. If it had been, I would not have hesitated, upon attention being called to it, to make it quite plain that no man can be prejudiced by applying to the court for relief to which he thinks he is entitled. But there is nothing of the kind in this case. The purpose to discharge Mr. Hicks, unless he would resign from the association, was communicated to him about two months prior to October 8th, and his promise of that day was given simply in the exercise of his right of election between the alternatives which had been previously presented to his choice.

The fact is that he did agree to sever his connection with the brotherhood, and, though in making his selection he was doubtless confronted by a dilemma. It is obvious that he was not in any legal sense subjected to compulsion. But it is not necessary that I should, and I do not rest my judgment upon this tardy agreement. It is at least certain that by making it Mr. Hicks acquired no better position than he occupied before, and without it I am of opinion that the receivers would have been justified in dismissing him upon ground peculiar to him, and wholly irrespective of the broad question which he has attempted to inject into his case. It results that the petitioner Hicks has not made out a case entitling him to the relief which he seeks, and it is even more manifest that the case of *George S. Riley* is utterly devoid of equity.

Here discussion might well end and both petitions be dismissed. This matter has been pending since the 8th day of October, but no person other than those who have been mentioned has asked to intervene. These petitioners assert that they represent other unnamed employes of the receivers, but it has not been shown that they do, and, if it had been, it could not be assumed that such others are better situated than the petitioners themselves. But, even if to be regarded as class bills, these petitions could inure to the benefit of persons only whose claim to relief is the same as that of the specified complainants, and whose equal title is founded upon the same alleged equity. The case of the actual plaintiffs cannot be strengthened by an averment that the case of some other person or persons, if presented, would be stronger. But it is contended that the general proposition which has been discussed at bar should be abstractly considered, and without regard to the merits of the particular cases in which it has been propounded—that the court, being informed that receivers of its appointment are alleged to be pursuing a wrongful course, should investigate their conduct at the instance of any informer, though himself without standing to complain of it, and, if it should find that wrong has been done or is purposed, should prohibit its continuance or commission.

I cannot assent to this. It is hardly necessary to say that in an ordinary case an injunction will not be awarded except at the suit of a party threatened with injury, and I am unable to perceive why, in the case of a receivership, a court of equity should be moved to restrain its receivers or to admonish them as to their duty at the instance of an accuser who is not interested either in the cause or in the particular subject to which his accusation relates. Any such practice would be anomalous. It would not be supported by either reason or authority. Its effect would be mischievous.

If receivers were required to answer with respect to their official acts at the suit of a mere meddler, the administration of their trust might be impeded by the constant and repeated intrusion of causeless objections; and, if the courts were to examine every criticism which might be volunteered for their attention, they would simply invite any litigious busybody to add his chimeras to the burden which cases of this kind legitimately impose upon the judges. Yet, as the counsel of the petitioners have earnestly urged me to inquire, as of my own motion and independently of suggestion, whether these receivers should not be directed to abandon the position with respect to labor organizations in which rule of the railroad company has placed them, I have carefully and fully considered the matter, and, waiving the irregularity in this case, I will, so far as I deem it to be proper that I should do so, briefly indicate my views upon the question thus pressed for decision.

The rule which is attacked was established, not by the receivers, but by the railroad company itself, and several years before these receivers or their predecessors in office were appointed. Therefore the question is not whether a policy originated by the receivers should be sanctioned, but whether they should be forbidden to continue in force a regulation which they found in operation when they assumed control of the business. It is to be observed, too, that it is not essential to the proper determination of this question that the character or objects of the association called the "Brotherhood of Railway Trainmen" should be either approved or condemned. In the argument submitted for the petitioners much has been said in condemnation of it, and in support of the claim that it is not only a lawful body created for beneficent purposes, but is one of a class which public policy encourages and upholds.

I think, however, that the court should not needlessly enter upon the investigation of this claim. The Brotherhood of Trainmen is not a party to this proceeding, and therefore its constitution, conduct, and motives should not be unnecessarily scrutinized. If I entertained an unfavorable opinion of it, it would be manifestly improper for me to seek occasion to express that opinion; and it would, I think, be scarcely less objectionable for me to obtrude any declaration in its favor. The ground upon which it is supposed that the courts should avail themselves of every pretext to discuss and rule upon the good or evil influence and tendencies of such associations is, in my judgment, the very ground upon which they should endeavor to firmly maintain a judicious reserve with respect to them.

If, indeed, an inquiry as to their status and aims would involve the consideration of "vexed and new questions," of "the greatest social problem of the day," and of "the burning question of modern times," then surely the announcement of a "policy of courts" concerning them should not be attempted, but avoided. The solution of social problems, and of vexed, new, and burning questions, has not been confided to the judiciary. Courts are established to administer the will of the legislature as embodied in law, and not the personal—it may be disordered—views of the judges themselves on matters of public concern.

Evils resulting from the inconsiderate conduct of either employers or the employed "are to be met and remedied by legislation;" and, "in the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such a corporation to discharge an employee from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him, against his will, to remain in such service, or actually to perform the personal acts required in such employments, or compel such managers, against their will, to keep a particular employee in their service." *Arthur v. Oakes*, 11 C. A., 209; 63 Fed., 319.

The real question is not whether the Brotherhood of Railway Trainmen is or is not inimical to the general welfare, but whether these receivers should be ordered to retain its members in their service, despite the company's preexisting rule to the contrary, and against their own unanimous judgment. If such an order ought to be made it must be because the action to be restrained would seriously affect the interests the receivers have in charge, or would be contrary to law, or unjust to those immediately concerned. If there is any other consideration upon which the direction asked for could be based counsel have not suggested it nor do I perceive it.

There is absolutely nothing before the court which would warrant it in holding that the trust property is likely to be injuriously affected by the receivers' enforcement of the company's rule. No one interested in that property has said

so, and the receivers, who, presumably, are best qualified to form an opinion on the subject, and who cannot be assumed to be untruthful, have united in the statement that they believe it to be to the interest of their trust that the rule referred to should be enforced. I accept this—the only evidence on the subject—as conclusive. I am not competent to form an independent judgment upon it; and in this district the practice of the court has always been to rely largely upon the discretion of its receivers with respect to the policy and details of their management, especially where, as in the present instance, it is not challenged by any person who is entitled to question it.

That the contemplated action is not unlawful is too plain for argument. That it contravenes public policy is asserted, but how can this be established? I know of no means of ascertaining the policy of the public in relation to personal rights but by consulting the public laws. This particular association is not a corporation, but if it was it would not follow, as seems to be supposed, that it could rightfully insist upon the retention of its members in the service of another corporation against its will. Neither is the argument advanced by showing that in some States it has been declared by statute to be a penal offense for any employer of labor to coerce or compel any person to enter into an agreement not to join any labor organization as a condition of such person's continuance in such employer's service.

I need not consider the effect of these enactments within the territorial limits of the sovereignties by which they have been enacted. It is enough to say that they are not to be found upon the statute book of the State of Pennsylvania, or of the United States, and therefore they are neither applicable to this case nor mandatory upon this court; and if any inference as to the "policy," either of the Federal Government or of Pennsylvania, can rationally be deduced from the existence of such laws in certain of the States, it would seem to be that, by abstaining from similar legislation, Congress and the general assembly of Pennsylvania have indicated their dissent from its principle. At all events public policy cannot, in the absence of law, be enforced by courts of justice. Policy may direct the legislature in commanding what is right and prohibiting what is wrong, but the law alone determines for the courts the rightful or wrongful nature of any conduct which is submitted to judicial investigation.

I do not doubt the authority of a court of equity to restrain its receivers from treating those whom they employ unjustly or oppressively; and when its power in that behalf is properly invoked, and the allegation of injustice or oppression is sustained, the protection which such a court may afford should be promptly and efficiently accorded. This, in my opinion, is and should be the law; but has a case of injustice or oppression been made out in the present instance? The rule complained of was promulgated as long ago as the year 1887, and the receivers emphatically assert their belief, which is not controverted, that no employé has since entered the service in ignorance of its existence, or joined the Brotherhood of Railway Trainmen without being aware that by so doing he violated it. There is some uncertainty as to the number of the receivers' employés who have become members of the Brotherhood, but it is certain that they constitute a very small proportion of the whole force.

To release these particular men from the operation of a rule which was known to them when they took employment, and which, except possibly in a few instances occurring through the oversight or neglect of some subordinate agent, they expressly accepted, would be unfair to the others; and to wholly abrogate the rule or to suspend its operation generally would open the door to a complete reversal of a policy which was deliberately established by the company several years ago, and which has since been pursued. In short, the court is asked, in a proceeding ostensibly instituted to obtain an order for the guidance of the receivers during the brief period of their control, to enter a decree the practical effect of which would be to permanently annul a regulation adopted by the owners of the property, and this without the consent of those now interested in it. I have not been convinced that here is anything in this case which would justify compliance with this request. It is possible there may be a few men—there can not be many—to whom the strict enforcement of the rule would occasion some hardship, but no such case has been made known, and the answers of the receivers display no vindictive feeling or disposition to harshness. I have no hesitation in relying upon them to deal fairly and discriminately with any case which may reasonably call for peculiar consideration. The several petitions mentioned in this opinion are dismissed.

chairman and gentlemen of the committee. I desire to present to this committee a credential forwarded to me from my home in Pensacola, Fla., at the request of the wage-earners' organizations of that city, delegating me to present the following preamble and resolutions in support of the anti-injunction bill, R. 18752; also a letter transmitting these documents, and in doing this I say that the representatives whose signatures are attached to this document are citizens of Pensacola, of good standing, personal friends of mine and of love and esteem.

They represent organizations, the personnel of which are men who are among the best citizens of Pensacola and the State of Florida, and they unanimously express, through the above resolution, their wishes so far as the bill now pending is concerned.

I desire to express my thanks to the committee for the courtesy extended in giving me an opportunity to present the papers sent me by these organizations from my home in Pensacola, Fla.

J. ED. O'BRIEN,

President of American Pilots' Association, Pensacola, Fla.

PENSACOLA, FLA., May 16, 1906.

HOUSE COMMITTEE ON THE JUDICIARY:

On the different labor organizations of the city of Pensacola, in convention called this date do hereby appoint the Hon. J. Ed. O'Brien as our representative to represent our side of this question and to use every endeavor to secure a favorable report upon any anti-injunction bill that may be pending before your honorable body at present.

Jos. M. Johnson, chairman; Dan. Murphy, secretary; Sam B. Flynn, assistant secretary; S. A. Manly, Frank J. Rien, Thos. Johnson, John O'Brien, W. B. Paul, P. McLellan, W. A. Watts, A. L. McClure, J. B. Wilters, J. T. Mitchell, W. E. Rowland.

PENSACOLA, FLA., May 16, 1906.

In view of the fact that the National Association of Manufacturers of the United States of America through its officers, D. M. Perry, president, F. H. Ryan, treasurer, and Marshal Cushing, secretary, are praying through confidential letters to commercial bodies and business men throughout the country for undue influence against the anti-injunction bill now before the House Judiciary Committee:

resolved, by the labor organizations of Pensacola, Fla., and surrounding district, assembled on this date, that our Representatives, Hons. Mallory, Perry, Sparkman, Lamar, and Clark be respectfully requested in the interest of good law and order, good patriotism, good public policy, and for the benefit of the laboring class in general, to use their influence and vote in favor of any anti-injunction bill that may come up; also to use every available influence with the Judiciary Committee to make a favorable report upon the same.

further resolved, That a copy of the confidential letters be attached to the resolutions for your more explicit information.

Thos. Johnson, John O'Brien, Jas. M. Johnson, Frank J. Rien, W. B. Paul, A. L. McClure, P. McLellan, W. A. Watts, W. N. Lonsbury, Dan. Murphy, S. A. Manly, J. T. Mitchell, Sam B. Flynn, W. E. Rowland, J. B. Wilters.

PENSACOLA, FLA., May 18, 1906.

J. ED. O'BRIEN,

Washington, D. C.

SIR: We take great pleasure in informing you that you were unanimously chosen as representative of the laboring class of Pensacola, to represent the case before the House Judiciary Committee which meets May 16, to consider the anti-injunction bill and House labor bill. A called meeting of the labor organizations was held May 15, and we are pleased to report that out of the fifteen (15) labor bodies here, delegates from eleven (11) were present, a copy of which we are inclosing, together with letters addressed to our Representatives in both Houses and to the members of the Judiciary Committee.

Inclosed you will also find credentials signed and sealed delegating you as our representative to appear before the committee. It is a source of much gratification to us, I assure you, to know that we have in placing this important matter in your hands—that we have the utmost confidence in your ability to cope with matters of this kind, where the interests of “the toilers” and wealth producers of our great country are involved. And in conclusion we sincerely hope that you will give this request of ours as much attention as lies in your power.

Wishing you and yours all the blessings from the Almighty and that success may always attain your efforts,

We remain, respectfully yours,

JAS. M. JOHNSON, *Chairman.*

DAN MURPHY, *Secretary.*

SAM B. FLYNN, *Assistant Secretary.*

CLOSING ARGUMENT MAY 2, 1906.

Mr. Chairman and gentlemen: Our opponents have endeavored to make much of the fact that we have abandoned a bill formerly urged by us, and that we have eliminated by amendment several features of the substitute bill. The fact that we have eliminated certain excrescences and unnecessary words by these amendments scarcely needs explanation or apology. Few measures of such importance ever spring full fledged from the brains of its authors, and we do not harbor any false pride or claim superiority in structural skill. Our purpose in amending has been to limit the scope of the bill so that it would just cover the needs of the situation produced by usurpation and oppression, and extend no further. The bill as it now stands is H. R. No. 18752. There was a mistake made by the typewriter in preparing the bill 18446 for introduction, and No. ——— had to be introduced merely to correct that mistake. I am sure no further amendment will be suggested by me.

Despite the fact that Mr. Fuller, representing organizations of American railway employees, made a most eloquent and earnest plea in support of the principle of this bill, when the Little bill was advocated by us, and again since the substitute was introduced, there are still those who say, “How unfortunate that organized labor is divided on legislative demands.” Let it be understood, once for all, that the difference, if any, between us is that our demands are not so numerous as theirs.

AN IRRELEVANT CONSTITUTIONAL ISSUE.

The opposition have devoted much time to a discussion of the question of deprivation of property without due process of law, proceeding upon the theory that the right to do business is property, according to the decisions of State courts. It seems to me that they are hard pressed for argument when they resort to such an attenuated plea. This being an act to regulate, or limit, the use of Federal process, the questions of property right under State laws, and views of State courts, have no relevancy. Congress either has this power or it has not. If it has the power its enactment is the supreme law of the land. There is no question whatever of a taking of property without due process of law.

To say that “for this purpose” certain things shall not be “considered, held, or treated” as property is merely to set a definite limit

to the power to issue a certain extraordinary court process. It is no infringement upon any property right, nor impairment of any State law, nor the invasion of State jurisdiction. Any State courts which hold the right to do business to be property may adhere to that view and enforce it, because we can not by this or any act control the jurisdiction or functions of State courts. But if we can limit jurisdiction of the courts of Federal sovereignty, we can limit it as well by the form of expression here adopted as by any other.

To regulate is to limit. Congress can establish courts and regulate—that is, limit their powers. And limitations may be imposed as well after, as at the date of, their establishment. Of this I have not the slightest doubt. In this bill we have walked in the path already trodden by former Congresses. We have embodied law similar to that already found in the statutes in order to make our bill complete in itself.

Section 16 of the judiciary's act of 1789, embodied in the revised act of 1874, provides: "Suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law." Here we have not only a principle, but a precedent for this bill. The judiciary act consists largely of limitations and regulations of the courts.

And the Supreme Court, in *Boyce's Ex. tr. v. Grundy*, 3 Pet., 210, said: "This court has often been called upon to consider section 16 of the judiciary act of 1789, and as often, either expressly or by the course of its decisions, has held that it is merely declaratory, making no alteration whatsoever in the rules of equity on the subject of the legal remedy." And on April 18 I read various acts of Congress limiting the jurisdiction of the courts to issue injunctions, and cited numerous decisions of the Federal courts giving effect to such limitations.

I will, as I proceed, notice only a few cases cited by the opposition. *Sharon v. Terry*, 36 Fed. Rep., 365, is good authority for our side and recognizes the validity of a Congressional statute prohibiting injunctions to stay actions in State courts. It is now section 720 of the Revised Statutes. Mr. Davenport dwelt at length upon *Brown v. O'Connell*, 36 Conn., and he assured the committee later that he had found a multitude of authorities making the distinction between jurisdiction and judicial power. Then he produced that case, and if it made any such distinction I think Mr. Davenport is the only person able to see it. The court in the case he produced used the words "judicial power" and "jurisdiction" interchangeably to avoid the harshness of language resulting from a repetition in the same sentence of the same form of expression, a feature often seen in the opinions.

But Mr. Davenport said there was a long string of decisions in Connecticut making the distinction. The case he cited was an old case. If the matter were of any importance, I would say that even one late case would have come in very handy if he could have found one.

The question is different under State constitutions from the question with reference to Congress under the Federal Constitution. For instance, the Wisconsin constitution provides as follows: "The judicial power of this State as to matters of law and equity shall be

vested in a supreme court, circuit courts, courts of probate, and justices of the peace; * * * ." Now, you see the constitution names the courts. And you will find that the constitutions of all the States from which counsel read decisions likewise name the courts.

The distinction between decisions under such constitutions and decisions under acts of Congress, in the light of the Federal Constitution, is not very broad; but that there is a distinction the decisions cited and quoted from clearly prove. The importance of the distinction was shown in the colloquy between Mr. Davenport and Mr. De Armond the other day.

Now, just to show that Mr. Mayer, who appeared here in opposition, is not infallible, I will read from his argument at the last session, page 402 of the hearings, as follows:

Do you think, if you were to pass a law that whenever judgment is recovered for damages, no execution shall issue to collect, that Congress will be within the limit of its constitutional power? Not a bit of it. Now that is this case, and you will notice that in this proposed law the power to enjoin is not only sought to be taken from the Federal courts, but from all courts.

In the record during Mr. Dudley's argument a few days ago I find the following:

Mr. PALMER. Well, as to procedure, but when you come to enforce a judgment, if you need an injunction to enforce, you have as much right to have an injunction as you have to have an execution. And naturally Mr. Dudley agreed with him.

Now, I call your attention to the case of *Finck v. O'Neill*, 106 U. S. Rep., where Congress did exactly what Mr. Mayer, Mr. Dudley, and Mr. Palmer agreed it had no power to do. It took from the court all power to enforce its judgments, and the act of Congress was upheld by the Supreme Court of the United States.

They make the power of Congress to take away every means of enforcing the decree of the court the test, and it must be admitted that it is a fair test. And yet the Supreme Court upholds the power of Congress.

SPECIFIC COMPLAINTS AND ORDERS NEEDED.

I am convinced from a careful consideration of this subject that the workingmen are as much interested in reform in this matter of procedure as in anything else. You know there is much criticism of, and fault-finding against, courts, lawyers, and, just now, against Senators, for taking up so much time in the consideration of mere matters of procedure—technicalities, as they are called. But where one guilty man has escaped by technicalities a hundred honest men have been saved by them from unmerited punishment.

The sweeping terms of dragnet restraining orders, and the insertion of words of general import, under which almost any act, however innocent, has been construed as a disobedience, and therefore contemptuous, is one of the most serious evils for which we seek a remedy. The provision requiring complaints to be specific is intended to remedy that evil.

DEBS CASE.

The doctrine of the Debs case is not involved here, however much it may have been under the Little bill. That case proceeded upon the theory of a property interest to be protected.

This view of the Debs case is fully and explicitly taken by the author of "High On Injunctions," section 20a, where that case is expressly referred to. The author explicitly states that the injunction in the Debs case was upheld because the jurisdiction rested upon the protection of property. And the view I take that the doctrine of the Debs case is undisturbed by the provisions of this bill was shared by Mr. Levi Mayer in his argument before this committee in opposition to a bill identical with the Little bill.

I read from page 397, hearing at the Fifty-eighth Congress, as follows:

The fact, however, that there is no adequate remedy at law has been the underlying reason why courts of equity have for centuries exercised jurisdiction in this class of cases. This was the very reason why the Supreme Court in the Debs case (158 U. S. 564) upheld the injunction granted by the lower court. In other words, the court granted the right to enjoin upon the established principle that the obstruction and destruction of property by strikers did not find a complete and adequate remedy at law.

THE RIGHT TO DO BUSINESS IS NOT PROPERTY.

The legislation we now seek is a mere legislative declaration of what the common law is. Congress has often changed the common law in the cause of public justice, and State legislatures have still oftener done so. Likewise it has been often found necessary, when the courts have gone wrong, to restate the common law in a statute in order to make the courts thereafter conform to public and professional opinion of what is the true principle. Many instances might be found. Much legislation has arisen concerning differences of opinion over definitions and many erroneous decisions have been rendered because courts gave unwarranted and strained meanings to words, and legislatures have had to give statutory definitions in order to settle such differences. Sometimes they have had to do this in order to check invasions by courts into the domain of private right and usurpations of power which the laws had never conferred. What is sought under this bill is the lopping off of an unwarranted judicial extension of the words "property," or "property right," and "conspiracy."

That Congress has the power to do this it would seem no intelligent reasonable lawyer could doubt. That Congress has done so is shown by some of the statutes to which I have referred. It did so in the Anti-Trust Act, as is seen in the case of the *United States v. The Trans-Missouri Joint Traffic Association*, where it was held that the definition, in the act, of a contract in restraint of interstate commerce was an extension and an enlargement of the common-law definition of a contract in restraint of trade. That is to say, it was held that although at common law a contract was legal if it imposed only a reasonable restraint upon trade, yet any restraint whatever upon interstate commerce was prohibited by the act. But I say let the opponents believe, if they choose—let anyone believe if he thinks any point is to be gained by believing—that the decisions which we condemn have gone to the extent of establishing a new rule of law on the subject of property rights and conspiracy. We meet them immediately upon the utterance of any such view with the duty of Congress to reaffirm the original and just principle of the common law and

thus compel those usurping courts to hark back to the true and well-established limitations upon their power.

It is true that there never has been an appeal to the Supreme Court along the exact line of our contention. But the case of *Northern Pacific R. R. Co. v. Whalen*, 149 U. S., noticed and quoted from by me heretofore is just as applicable as any case can be, where the facts, though not identical, yet are completely analogous. All who have spoken in opposition have claimed that the bare right to do business is property, and that labor is a commodity. Nor is there an entire absence of judicial utterance to the same effect.

I wish especially to show you the extent to which Mr. Mayer has educated himself along the lines of his clients' interests. I read from the hearing at the last session, page 399:

Mr. GILLET of California. Right here, perhaps, a question submitted by Mr. Furuseth would be proper.

Do you, in speaking of property, mean the earning power of productive property?

Mr. MAYER. I should certainly say, economically speaking, that earning power and productive power constitute property. The right to labor is property. The fact that labor may be intangible does not take from it the element of property.

You see these constitutional and corporation lawyers who have spoken in opposition to be consistent, and in order to give even a semblance of plausibility to the jurisdiction which the courts have usurped, based upon a man's right to do business as property, must also insist that the right to labor is property.

But that labor is not property is too well settled to require of me more than a bare reference to principles established by the decisions. Until the invention of the fiction that it was property became necessary to give a semblance of reason to these absurd decisions, and to give the arguments of counsel before this committee a semblance of plausibility, no one ever had the hardihood to present the proposition before a court in a form to be directly passed upon. The judicial utterances which I shall read are in cases where the question was collaterally involved, but none the less necessary to be passed upon.

It has been necessarily passed upon in cases where the enforcement of time contracts to labor was involved. Thus in *Union Pacific R. Co. v. Ruef*, 120 Fed. R., 111, the court said:

Contracts for personal labor will not be enforced, and the laborer can terminate his contract at will, being responsible only in damages for not fulfilling his contract. If this were not so, then a person could sell himself into servitude for a period of years, or even for life, and in whole or in part lose dominion over himself; and this is so abhorrent that courts will not recognize such contracts.

So in *Robertson v. Baldwin*, 165 U. S., Mr. Justice Harlan said:

Of the meaning and scope of the constitutional interdiction upon slavery, no one can entertain doubt. A contract by which one person agrees to become the slave of another would not be respected in any court, nor could it become the foundation of any claim or right, even if it were entered into without constraint being used upon the person who assumed to surrender his liberty and to become the property of another. But involuntary servitude, no matter when it arises, if it be not the result of punishment for crime of which the party has been duly convicted, is as much forbidden by the Constitution as is slavery. If that condition exists at the time the authority of the law is invoked to protect one against being forcibly compelled to render personal services for another, the court can not refuse to act because the party seeking relief had voluntarily agreed to

ender such services during a given period. The voluntary contracts of individuals for personal services in private business can not justify the existence anywhere or at any time in this country of a condition of involuntary servitude not imposed as a punishment for crime any more than contracts creating the relation of master and slave can justify the existence and recognition of a state of slavery anywhere, or with respect to any persons, within the jurisdiction of the United States. The condition of one who contracts to render personal services in connection with the private business of another becomes a condition of involuntary servitude from the moment he is compelled against his will to continue in such service. He may be liable in damages for the nonperformance of his agreement, but to require him against his will to continue in the personal service of his master is to place him and keep him in a condition of involuntary servitude.

And a little further along he said what is peculiarly appropriate here:

It is a very serious matter when a judicial tribunal, by the construction of an act of Congress, defeats the expressed will of the legislative branch of the Government. It is a still more serious matter when the clear reading of a constitutional provision relating to the liberty of man is departed from in deference to what is called usage, which has existed, for the most part, under monarchical and despotic governments.

The same justice in *Arthur v. Oakes*, 63 Fed. R., 310, said:

It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such restraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States or in any place subject to their jurisdiction.

If one can not be coerced by a court of equity to specifically perform a contract of service, and if the only remedy for its violation is an action for damages for its violation, of course the action for damages is in most cases an inadequate remedy; just as our opponents say, if the labor or service were a commodity, then, of course, owing to the admitted inadequacy of the legal remedy, courts of equity would have jurisdiction to compel delivery of that specific property. But this the Federal courts, and nearly all State courts, say they can not do.

Now, in every definition of property you find the *jus disponendi* mentioned. You find this element entirely absent when you come to consider the notion that labor or the right to labor, or business or the right to do business, is property. How can anyone vest in another his own strength or mental or moral faculties, each peculiar to each individual and constituting his value, and his only value, as a business man in the one case and as a working man in the other? To ask the question is to suggest the answer, that it is an impossibility. The principle that all property rights are assignable and that personal rights, such as the bare rights to sue in equity or for torts not affecting the estate, and personal rights generally, not being property, are not assignable.

The arguments of the opposition establish, if nothing more, that the doctrine that one's right to do business is property must have its counterpart in, and is dependent for even plausibility upon, the doctrine that the right to labor is property. Now, I pointed out at a former session the distinction between ordinary labor which one engages to perform for another and the product of that labor, and if we pursue the case of a man attending to his business we find that the analogy holds good throughout, the only difference being that in the one case his reward comes in the form of a fixed stipend paid

periodically, and in the other in an accumulation of value which he holds in his own hands. The man working for himself is both laborer and capitalist, while in the case of one hired the laborer is a second person, attending to the same business. I showed that in the case of the manufacturer of watches he retains the product of labor which is property, while the workman retains his capacity to do more labor for that manufacturer or any other, which is simply a personal right, and that the principle held good at every stage of manufacture and in every form of production.

So the business man working for himself, whether superintending, buying and selling, or constructing, retains all the time the product of his labor, whether in money, bills receivable, or other property. He also retains the capacity to continue giving personal attention to the business; that is, to carry on the business, which is simply his personal right. And, mark you, one of the products of continuous attention to business may be good will, which is a form of property, but it is a product of labor, a product of exercising the right to do business; that is, of the right to labor. Hence the provisions of this bill are on the exact line of reason, philosophy, law, and common sense that the "right to do business" shall not be considered, treated, or held to constitute property or a property right.

Let us pursue a little further the theory of the opposition and see to what absurdities it will lead. This is the pivotal point, as the opposition view it, and the premise upon which all their so-called authorities rest. A poet is, we will suppose, engaged in writing a poem which he hopes to sell to a publisher. Now, isn't he doing business while so engaged? Isn't he a business man in a small way? Well, someone comes along and continually disturbs him while at work. Did you ever hear of an injunction to prevent such a disturbance? Wouldn't an application for an injunction be treated as a joke or an absurdity? Any judge with equity jurisdiction, having sense enough to take the oath of office, asked to grant an injunction, would, upon his application for an injunction, say to him: "My dear sir, the proper place for you to go for relief is to the police court, and have the fellow arrested or bound over to keep the peace. The interference of which you complain is with your personal right to do that particular business." But if the poet comes with a complaint that some one is about to seize a completed or partially completed poem of value and destroy it, there we have a case of irreparable injury to property, perhaps.

Now, suppose the poet becomes a book publisher and dealer. Whereas he formerly used his imagination and artistic faculties, he now uses other faculties. His property interest has increased; but with respect to that he has ample protection, as before, in the way of civil, criminal, and equitable remedies. And with respect to his personal services and supervision, he occupies exactly the same relation as before. Now he employs, we will say, a half dozen or fifty other men. The service which they perform is just as much a matter of business as his service. They are doing the same business that he is doing. They are differently paid, and their tenure of service may not be so secure, but that is a difference without any legal-importance whatever. He keeps on selling books and stationery for several years under the name, we will say, of The Jones Book Store.

That name becomes familiar to a large number of people and there is produced what is called good will. Now, that **good will** is also entirely distinct from the fact that certain people have formed the habit of going to The Jones Book Store to trade, although the fact that they do go there is evidence of the existence of that good will.

Our opponents confound the means employed, the labor and attention to business, if you please, with the thing produced by and through such means. They confound the evidence which proves good will with the good will itself. To prove it we only have to suppose the death of Jones. Does the administrator have to sell the remaining books and fixtures and the good will to the same person? Of course not. He may auction off the books to the public and, likewise, he may auction off the good will, including the trade name, and the unexpired lease, or right of renewal, in the same way. How about one's right to do business there, or elsewhere, or at all? Why, that is of course ended and valueless, just as Jones might have rendered it valueless at any time by ceasing to exercise it, just as one of his clerks might have rendered his right to labor barren and of no value at any time during his employment by throwing up his job. There is no property right connected with that bookstore to be protected by any legal or equitable remedy except the visible property, the horses in action, the incorporeal hereditaments, if any, and good will; and the latter can only be injured by infringement, such as would constitute a fraud upon the public. And it is scarcely necessary to say that no question of infringement could ever arise as the result of a labor dispute. Hence we say in the bill that no right to do business shall, for this purpose, be held, treated, or considered as property.

You can carry this illustration through the whole world of production and commerce, and you will find that it holds good. The good will may be, under statutes almost everywhere found, registered as a trade-mark, or a trade name, and thus evidence be furnished of its existence as property. And it is a part of the assets and stock in trade, just as is any article of personal property. And the owner may sell it and then do business under some other name and at some other place, or he may sell it and go out of business. Or if he die it goes to his personal representative as other property.

The opponents of this bill have fallen into the error of believing that everything in the world that is desirable or enjoyable or valuable must necessarily be property; and it must be admitted that judicial inspiration or sanction for that belief is not entirely wanting. If there were none such we would have no occasion to be here. But in truth it is as sure as it is sound, when stated as a legal proposition, that the most valuable things pertaining to mankind are of a character which precludes their being considered as property. And among these is man's right to labor; that is, to do business.

As we are constituted, there can be no life without labor. The world is filled with toil. The lawyer addressing a jury is at work, and the jurors listening to him, whether bored or interested, are doing the right to labor; that is to say, they are doing public business. The manufacturer, making needles, or forging anchors, and employing thousands of others, is just as much at work as his employees; that is, he is, in the same sense, as they are, exercising the right to do business. It is a thing of inestimable value, but not property; and in

the use of it he will be protected by law, but not by injunction, which can only be rightfully employed in the protection of property rights.

Mr. Davenport, on Wednesday, April 18, asserted, while I was addressing the committee, that every State in the Union had declared a man's business to be property. I denied it, and challenged him to produce authorities. He made the same unqualified assertion during his argument and produced cases from just three States. The courts in these three cases were uttering general platitudes. If it can be sincerely contended that they spoke advisedly, rather than through inadvertence, then I say they are at war with universal authority, and were engaged in the promulgation of most damnable heresy. These three courts were those of Pennsylvania, New Jersey, and Vermont. These are the only State courts that ever uttered such nonsense.

Now, I have not gone through the decisions of all the States to prove a negative, but I have examined all the dictionaries, English and American, as well as the encyclopedias where definitions are given, and all the decisions cited, and I will read to you some of the definitions. I will not read all, but they all agree with those read. I call your especial attention to the fact that the right to labor and the right to do business are universally treated as synonymous; and the same rule of decision is invariably applied to the one as to the other, in the cases cited. I now read from vol. 5, American and English Encyclopædia, page 71:

Business: That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit (citing numerous cases).

That which occupies the time, attention, and labor of men for the purpose of profit or improvement (citing cases).

The employment which occupies the time, attention, and labor (citing several cases).

Now we come to a more exact definition, in which the Encyclopædia cites Webster's Dictionary and numerous authorities.

That which busies or that which occupies the time, attention, or labor of one as his principal concern, whether for a longer or a shorter time.

Black's Law Dictionary:

A matter or affair that engages a person's attention or requires his care; an affair receiving or requiring attention; specifically, that which busies or occupies one's time, attention, and labor as his chief concern; that which one does for a livelihood; occupation; employment; as, "His business was that of a merchant;" "to carry on the business of agriculture."

That which is undertaken as a duty or of chief importance or is set up as a principal purpose or aim. For instance: "The *business* of my life is now to pray for you." Fletcher—Loyal Subject, IV, 1.

Century Dictionary:

That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit.

Bouvier: Substantially the same as Black and Century.

I will immediately follow this with definitions of property.

Century Dictionary:

The right to the use or enjoyment, or the beneficial right of disposal, of anything that can be the subject of ownership; ownership; estate; especially ownership of tangible things.

In a broader sense, a right of action is property; so is a mere right to use or possess, if it be a right as against the general owner, which is termed the

general property. The entire property is the exclusive right of possessing, enjoying, and disposing of a thing.

Black's Law Dictionary: He adopts a definition from Mackeld, *Rom. Law*, sec. 265, as follows:

Rightful dominion over external objects; ownership; the unrestricted and exclusive right to a thing; the right to dispose of the substance of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it.

He also adopts a definition more in detail from Austin's *Jurisprudence* (Campbell's ed.), sec. 1103, as follows:

A right imparting to the owner a power of indefinite user, capable of being transmitted to universal successors by way of descent, and imparting to the owner the power of disposition from himself and his successors per universitatem and from all other persons who have a spes successionis under any existing concession or disposition in favor of such person or series of persons as he may choose, with the like capacities and powers as he had himself, and under such conditions as the municipal or particular law allows to be annexed to the dispositions of private persons.

Bouvier's (latest) Law Dictionary adopts 2 Blackstone, page 2:

The sole and despotic dominion which one man claims and exercises over the external things of the world in total exclusion of the right of any other individual in the universe.

Also from 56 N. Y. Rep., page 268:

The right to possess, use, enjoy, and dispose of a thing.

Definitions of property and property right—meaning the same thing—taken from the 23d American and English Encyclopedia were given in my opening argument.

GOOD WILL DISTINCT FROM BUSINESS.

Now, let us proceed by a process of exclusion to distinguish between the mere right to do business and good will. Neither of them covers the premises, of the machinery, or the raw material, or the finished product. These are all tangible property. It does not cover the book accounts or the bills receivable. These are all choses in action; they are property and property rights. What is this right that the merchant enjoys when he opens a store on Pennsylvania avenue or Broadway? Just the same and no more as the lawyer enjoys and exercises when he buys law books and office furniture and opens an office. The same as a contortionist who rents a hall and gives an exhibition. Just the same as the contractor when he takes a contract to erect a skyscraper. You will observe that not one of the usurpatory orders brought before the committee pretends to be based upon the preservation of good will.

Good will is of a shadowy character as property. It is of but little account at this date unless a trade name or trade-mark be registered. There are statutes everywhere for registration and for proceedings to prevent, and to obtain damages for infringement. Now, when advertising is so prevalent and there is such general information as to where goods may be had, good will, with reference to place of sale or manufacture cuts very small figure. All the benefits formerly conferred by good will are now secured under the trade name and trade-mark laws. The only remedies given these are injunction to prevent infringement and damages for past infringements.

Suppose you are manufacturing hams—we will say Armour's hams—and that these hams have acquired great sale and are generally known, so the public looks for that label when they go into the market to buy hams. These hams are tangible property. The right to manufacture and sell them is a personal right. But nowhere, either under the title "good will" or "business" or "property" in the dictionaries, encyclopedia, nor anywhere else, except in the opinions of these three States and a few Federal judges, will you find a man's business referred to as property.

In a Vermont case cited by Mr. Davenport, I read:

The labor and skill of the workmen, the plant of the manufacturer, and the equipment of the former are in equal sense "property." *State v. Charles C. Stewart et al*, 59 Vt., 273.

I didn't read any further. I care nothing for the opinion of a judge on any subject who takes that view. But I haven't found any law in Vermont to tax that species of property of the workman or to sell it on execution. I suppose that will be the next step, and then the laborer will be a slave in that State, in name as well as in fact.

Barre v. Essex Trades Council, 53 N. J. Eq., 101, also cited was a decision by a vice-chancellor, who decides:

1. A boycott without violence where the undisputed truth is told is unlawful.

2. One's business is property, even the business of the publisher of a newspaper.

3. An injunction lies to stop the boycott.

Naturally he has to go back about 500 years to a monarchy for his authorities, and even then he fails to find support.

The trade-mark cases, 100 U. S. Rep., has no application. The act was not one to regulate practice in the Federal courts.

SECTION 2 OF THE BILL, RELATING TO CONSPIRACY.

The opposition profess to believe that we seek a change in existing law governing conspiracy. Such is not the case. But Congress has power to change the common law upon any subject upon which it has power to legislate. Many instances could be cited. *Cooley's Const. Lim.*, p. 111, says:

It is always competent to change an existing law by a declaratory statute, and where the statute is only to operate upon future cases, it is no objection to its validity that it assumes the law to have been in the past what it is now declared that it shall be in the future.

I know of no statute with which this second section of this bill, limiting conspiracy, is in conflict. It does not conflict with the act of May 17, 1879 (21 Stat. L., 4), amending section 5440 of the Revised Statutes of the United States, defining conspiracies, which reads as follows:

If two or more persons conspire, either to commit an offense against the United States, or to defraud the United States, in any manner or for any purpose,

etc., making the act of one the act of all and prescribing a severe punishment, because both the acts here specified are essentially criminal, whereas this bill only exempts acts from forming the subject of conspiracies which are free from illegality. It does not conflict with

section 5440 defining conspiracy. Nor does it conflict with any provision of the antitrust act, which it was feared the Little bill (H. R. 4445) did. The provision referred to is the first section of the antitrust act (act of July 2, 1890), which expressly makes the entering into certain contracts illegal and punishable.

As to the part of this bill which limits the meaning of conspiracy, that was done over thirty years ago in England. The English conspiracy and protection act of 1875 provides:

An agreement or combination of two or more persons to do, or to procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be punishable as a conspiracy if such act, as aforesaid, when committed by one person would not be punishable as a crime.

You see that the only difference between that act and this bill is that the act is broader in its terms and less specific than the bill. It is also to be noted, under the act, to exempt the agreement from criminal consequences it is only necessary that the agreement shall not relate to a criminal offense, while under this bill the agreement will still be a conspiracy if it relate to doing an act which is unlawful merely. And I am correct in saying that we are moderate, reasonable, and conservative in our demands.

Now, I will notice briefly some of the authorities cited in opposition.

The case of *Boutwell v. Marre* (71 Vt., 1), is a boycott case. Strange to relate, the decision turned upon the by-laws of the defendant association which, it was claimed, imposed harsh conditions upon its membership. Courts usually leave the internal affairs of voluntary associations severely alone, refusing to issue a mandamus, where a member has been arbitrarily and unjustly excluded, to restore him, or an injunction to prevent the expulsion. But this court had a specific object in view, and no scruples whatever about seizing a suitable weapon.

The case of *Martell v. White* (69 N. E. 1085, Mass.), simply holds that while injury done in the battle of competition is *damnum absque injuria*, yet injury done one maliciously is actionable.

I had already shown that this peculiar view obtained in Massachusetts, and that it had been combated in a dissenting opinion by Justice Holmes in *Vergelahn v. Guntner* (157 Mass.). I had also shown that the same court had refused to apply the same principle where the boot was on the other foot, and workmen were suing employers, in *Worthington v. Waring* (167 Mass.), a case from which I have already quoted.

Now, *Cullan v. Wilson* (127 U. S., 540) is relied upon to refute the position that an agreement to do that which without the agreement would not be a crime is nevertheless a criminal offense. I propose to show that the inference drawn by the opposition is unwarranted; that no such proposition was decided in that case. In the first place, the agreement alleged was one to keep a man from procuring employment until he was starved to death, which would be manslaughter at least. At any rate it would be unlawful, because a malicious injury. Anyhow, as said by the court, the charge was one for a criminal offense. The question being whether the defendants were entitled to trial by jury, of course only the form of the charge was material. The appeal was from a conviction for an unlawful

conspiracy, and the error alleged was that the defendant had been tried without a jury, and the conviction was reversed upon that sole ground. It has no applicability to any question before the committee.

United States v. Weber (114 Fed. R., 950) is a case in which the judge attempted to distinguish between the rights of strikers when property is in the hands of receivers from other cases, a doctrine exploded in the *Arthur v. Oakes* case, the opinion being written by Justice Harlan in the court of appeals.

THE REAL INCENTIVE OF THOSE OPPOSING THIS LEGISLATION, AND OF THEIR JUDICIAL TOOLS WHOSE ACTS HAVE MADE IT NECESSARY, IS TO PLACE MEN UNDER CHARGE OF VIOLATING CRIMINAL STATUTES ENACTED BY JUDGES, AND THEN FINE AND IMPRISON THEM WITHOUT JURY TRIALS.

When I find a thought expressed more concisely and forcibly than I can express it, I feel that it is right to quote and give due credit. Mr. Samuel Gompers, president of the American Federation of Labor, concentrated into two sentences a clear description of both the motive behind, and the evil wrought by, these judicial usurpations. He is not a lawyer, but has a shrewd, appreciative mind.

I read from his address before this committee at a former hearing: "That there is a legal remedy for some of the things which an injunction can enjoin goes without saying; but it is the purpose of the opponents of our legislation on this subject to get rid of the trial by jury in the regular process of the law. Their purpose is to make the judge who issues the injunction, the judge, the jury, and the executioner, and indeed to take away from the workmen enjoined the constitutional right of being tried before a jury of their peers for any crime or offense with which they may be charged."

The progress is easy from the point of granting an ultra-judicial order to a deprivation of liberty. There is no remedy for the anguish and imprisonment. No right of action against the judge—no measure of damages, if there were. I suppose bond is required in these cases; but there is no right to sue on the bond for the imprisonment for contempt. Even if there were, what damages could compensate a man for the loss of his personal liberty?

THE REMEDY SOUGHT ONLY COMMENSURATE WITH THE WRONG.

Nor it was our intention, in framing this bill, not to ask of Congress any more than a remedy for a specific character of usurpation. There could be no valid objection to striking out all those terms of limitation—all those words limiting the provisions to cases arising between employers and employees, etc.; and unless this usurpation is estopped right here and now, the time is sure to come when a string of precedents will be established which will compel the courts, willingly or unwillingly, to extend this preventive jurisdiction to cases arising between business men, and to erect a despotism more complete than was ever exercised by the Roman Emperors or by Charles the First, over the whole business and industrial world.

We struck out the words "or between employers," because the usurpation has so far been strictly of a class character; that is to say, they have never invented the fiction of a property right, resting on the shadowy notion of a man's business, for use between business men. No, these willing tools of capital, these little men, immune

rom punishment, weak in intellect, and still weaker in morals, but with great powers for evil, send their thunderbolts of despotism into the ranks of labor exclusively. Let the startling doctrine that the privileges of doing business is property, become firmly established, and you will find the man on the next block enjoined from sending agents around instructed to claim that his bacon and flour or baking powder is better than the complainant's.

On the same bad precedents they will be forced to suppress by injunction all such advertisements as one I saw in a yesterday's newspaper, in which a merchant claimed that he had better silk skirts for the same money than any of his competitors. And why not? If the statement in the advertisement be true, of course, the injunction would have to be dissolved; but meantime it might ruin the party enjoined. It would be easy for some other merchant to allege in an affidavit that it was false, that in fact he had just as good silk skirts for the money, and that the advertisement had the effect of irreparably injuring his business. In any event the chancellor would have to try, without a jury, the question of relative qualities of the goods. He would be the supreme arbiter over commerce, an intruder into every man's business. He would destroy not only legitimate enterprise, but the freedom of speech, and of the press.

The framers of the Constitution, according to all interpretations, took care that bounds should be set to equitable jurisdiction. It has universally been held that the equitable powers are those, and those only, that were possessed by the English judges at the time the colonies separated. But these judges single out a class in the community and extend arbitrary power over that class exclusively.

Rome changed from a Republic to an Empire by abuse on the part of the tribunes of power to enjoin. First, they used it to forbid, next to command; then came the Emperor. The next use of the power here may be to forbid competition. The doctrine that a right to do business is property is dangerous. Such power, like all unusual and inordinate power, will be abused. The Romans, unable to return to former conditions, because the Roman employers' associations opposed and exerted undue influence in the Senate, cried out *ave imperator*. Then arose Carl the Great, first Emperor of the Holy Roman Empire of the middle ages. Thus extension and usurpation of the power to enjoin ripened into the undisputed power of one man to legislate, adjudicate, and execute.

In *Boyd v. United States*, 116 U. S., 659. Mr. Justice Bradley in delivering the opinion said:

"It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

I deem these words from our highest court very appropriate upon the present occasion. No less appropriate were the following words of Justice Harlan in *Robertson v. Baldwin*, 165 U. S., 275:

"In considering this case it is our duty to look at the consequences of any decision that may be rendered. We can not avoid this duty by saying that it will be time enough to consider supposed cases when they arise. When such supposed cases do arise, those who seek judicial support for extraordinary remedies that encroach upon the liberty of free men will, of course, refer to the principles announced in previous adjudications and demand their application to the particular case in hand."

OPPOSITION VIEWS OF MISSION OF ORGANIZED LABOR

"Labor organizations should be encouraged, within proper limits," says Mr. Drew. That is exactly what Judge Grosscup said in 1894, and next day issued an injunction which left the men only the liberty to breathe. These publicists and patriots are endeavoring to fix the limits.

Why all this about the misdeeds of workingmen? Why is it any more material than volumes I might have said, but have not, against employers?

We are told about men being killed and hurt in various places during strikes. I call your attention to the fact, which would be borne out by the files of the daily press if anyone should take the trouble to make the comparison, that there have been fewer acts of personal violence in any city or town in the United States during general strikes than during any other equal period. And I state also, and I know it will stand the test of proof, that of all acts of violence occurring during strikes but one in a thousand can be justly attributed to strikers. Why, you may ask, is there a decrease of homicides and assaults during strikes? I'll tell you. When a strike is ordered by a union, every member is put on his good behavior—made a committee of one on peace and order—and a large committee is appointed, called a strike committee, whose business and duty it is, under specific orders, to assist the official authorities in maintaining order.

A gentleman comes here and tells that, at some prior date, a crime was committed at New York, Omaha, or Saginaw. I answer that that is immaterial. But, he says, the man who committed it was on a strike. I say "deplorable, shocking, but still totally irrelevant to the present purpose." Then, he says, "Oh, but it was the doings of union strikers." And, if he is a representative here of one of these antiunion associations, and I were to ask him how much attention he would have paid to it if it had been a plain ordinary, every-day, old-fashioned murder, he would be bound to answer that he would have given it but little thought. And that is just the way. Whatever arguments they may advance here, the sole secret of their opposition to this legislation is their illy-concealed hostility to the unions, because they are unions.

Suppose in the same city there are fifty druggists selling impure drugs, forty saloon keepers, some violating the city ordinances, and all selling adulterated wines and liquors contrary to the criminal statute, and perchance a man threatening to kill another. Do you think our eloquent advocate of law, order, and morality will ever dream of suing out an injunction to stop the sowing of the seeds of death by this promiscuous sale of poison, or to stay the hand of violence? No; he will not even do what he might lawfully do. He will not go to a magistrate and swear out a warrant for these saloon keepers and druggists, and the chances are that he will not go and tell the man whose life is threatened of his danger. He will leave all this to the district attorney and the police.

He may not even give these peace officers his information, on account of his reluctance to become personally involved, but he has patriotically (?) joined one of these employers', or citizens', or antiboycott clubs. And, by the way, why is it that the men who have person-

ally suffered loss from strikes and boycotts and violence exerted by union men against other workmen do not appear before this committee and testify? In all these hearings there has not been before you one of that class who had anything to tell of his own knowledge. They are all mouthpieces with secondhand information and evil inspiration.

Now, none of these matters are, strictly speaking, relevant on this occasion. The legislation sought has reference to what men may or may not do when a dispute has already terminated, and not to the cause of such disputes. Men may do things hurtful to the interests of others for a variety of reasons. The motive for the act has very little to do with the exercise of jurisdiction in civil cases.

If one is about to chop down another's shade tree, believing he has title and a perfect right, thus rendering his motives entirely innocent, the real owner has a right to have him enjoined, notwithstanding his innocent intentions. On the other hand, if strikers are doing certain things, and an application is made to enjoin them, the character of the grievance—that is to say, their reason for going on a strike, whether for shorter hours, better wages, or a closed shop—should not be given the slightest consideration by the court. Sole consideration would have to be given to what they were threatening or about to do, and to its effect upon property rights. Therefore I say it is an imposition upon the committee to drag in the matters of difference between unionists and their opposers.

Just consider this test of relevancy a moment and you will see that it is a fair one. Then carry it in your mind and apply it to the records made at the present session and at prior sessions, and you will see that about 90 per cent of the speeches by the opposition pertain to matters foreign to the real issue. Now we might imagine one of you gentlemen to be hostile to the aims and aspirations of organized labor, and to consider all its demands upon employers unreasonable; and yet such member might very consistently support this bill because it only relates to matters which have no essential connection with such aims and aspirations, or with the question of reasonableness, or unreasonableness of labor's demands, in the battles of trade.

Just to show you the utter fanaticism and blindness of those who come here to influence you with tirades against this bill, which tirades almost invariably turn out to be attacks upon unionism as such, and not because of actual knowledge, I call your attention to a few words in the record at the Fifty-eighth Congress, from the mouth of Mr. F. W. Job, of Chicago, who says he represents the Chicago Employers' Association and other antiunion clubs. He makes what he considers the startling statement that, "In the case of murders, we have credited up to the cause of organized labor—in the name of organized labor—four in the year of 1903." And in the same address, on page 86, of the hearings at the Fifty-eighth session, he claims that in that year—in the same year 1903—there were 1,464 labor disturbances, all of which but perhaps 150 were strikes. Just think of it.

All these strikes and disturbances and only four so-called murders that this zealous antiunion association could accuse the labor organization of being responsible for. Now, out of the 2,000,000 inhabitants of Chicago, perhaps 100,000 men belong to the unions, and there

are probably as many more working people who, though not in the unions, are in sympathy with them. And yet they were so well behaved, so orderly and law abiding, that even their enemies were able to attribute to them only four of what this Swift accuser calls "murders"—only four homicides. He was not bothering with other things—for instance, the other 361 violent deaths occurring in Chicago during that year.

What conclusion can we draw from this? The conclusion is inevitable, that owing to the vigilance of the labor organizations and strike committees there is less violence during a strike, or an epidemic of strikes, than at any other time. Now, while speaking of Mr. Job's statement, let us see about his backing. He says the Employers' Association contains 2,000 members. And like the Saginaw man, Mr. Drew, they are lawyers, doctors, clerks, and perhaps a few nonunion men. And he also says the strikes have inflicted loss upon and inconvenienced the entire population. No doubt that is true. But if the prevailing sentiment among employers was against labor, there should be more than 2,000 in his association, after such a turbulent year, I should think, counting lawyers, doctors, and everybody eligible. There are not less than 40,000 employers of labor in Chicago. And, yet counting the doctors, lawyers, bootblacks, etc., they have a membership of just 2,000.

But I feel that I would be remiss in the performance of duty if I did not give special attention to the conflict now waged in New York between the Typothetæ and the Typographical Union, represented here by the former's attorney, Mr. Beatty. I have with me the wage scale as presented to me by Mr. Frank Morrison, secretary of the American Federation of Labor, now in force in that city, and it reads as follows:

NEW YORK SCALE FOR BOOK AND JOB OFFICES, MARCH, 1905.

Compositors.—Book and job scale: Hand composition, 44 to 50 cents per thousand; per week, \$21.

Proof readers, per week, \$21.

Floor men and ad men, per week, \$21.

Machine printers, per week, \$21.30.

You can scarcely realize the inadequacy of such wages if you have not lived in New York. Of the educational qualifications required of the employees I can not speak in detail, but they are very high. In short, each must be a man above the average in literary attainments. The most talented writers always expect the proof sheets to come back with a lot of query marks on the margin calling attention to rhetorical lapses, to say nothing of the absolute correctness required in the matter of orthography and punctuation.

Well, of 7,000 of these 700 are on strike for an eight-hour day. It seems that the Typothetæ have yielded to nine-tenths of the strikers. But they have a legal and a detective force on the heels of the 700. Nevertheless the other 6,300 are lending aid to the 700.

But with the lawyers and detectives and bullies always hired to insult and pick quarrels with strikers and afterwards to appear as witnesses against them, there have been eight convictions for assault. The attorney for the typothetæ got an injunction, and flaunted it

were proudly and exultantly. The poor, weak, unfair judge who issued it was no doubt made to believe that the mere business of the complainant was property. But that was not enough to warrant the issuance of an injunction. To complete the fabricated basis for the infamous outrage which he perpetrated upon these poorly paid and overworked men, who are among the best citizens of New York, notwithstanding their poverty, he had to hold that the capitalist has a property interest in the unemployed in what he would term the 'labor market.'

But owing to the brazen zeal and blind partizanship of the typothetæ and their legal representatives, the rapacity, unfairness, and over-reaching greed of the typothetæ was made to appear in a very strong light. He thought he had advanced a very telling argument when he said it was necessary to enforce a nine-hour day, which really means lower wages than an eight-hour day, in order to capture and hold in New York the book and job printing of the United States.

And thus they are trying to destroy the publishing business in every other city. Another evil purpose of the trust is to mass the best compositors into New York, where they will be forced to compete with each other and be enslaved in wages and hours of work, and otherwise subjected to maltreatment.

THE PUBLIC INTEREST.

Outside the parties immediately interested in these labor disputes stand the great trading public and the professional class. Much has been said by the constitutional and corporation lawyers who are opposing us about this great public interest which they have in some instances assumed to represent. Let me take the legal profession as fairly representative of these classes. There are about 150,000 men in the nation who earn a living, and some much more, as practicing lawyers. Whence come their fees? Of course the larger rewards come from corporations, but comparatively few of these corporations are large employers of labor. They are banks and incorporated mercantile concerns. Their clients consist principally of merchants, mercantile corporations, and farmers, the bulk of whose patrons are wage-earners, in which class I include those drawing salaries. Of course there is considerable business done between these nonlabor classes.

For instance, these 150,000 lawyers pay to merchants many millions of dollars. But there are at least 10,000,000 wage-earners who earn an average of at least one-half as much as the average lawyers. Counting the large percentage of lawyers who receive a bare living, I think \$1,500 a year is a liberal estimate. The wage-earners, counting those on salaries, each receive an average of about half that sum. Then, supposing it is all used, tradesmen, shopkeepers, and others get from lawyers \$225,000,000 each year. How much do lawyers' clients get from labor? They get \$7,500,000,000, or over 33 times as much as from lawyers. Now, where are lawyers affected by the question of low wages or high wages? One hundred dollars increase enriches that class to whom lawyers must look for fees to the same extent, besides raising the standard of citizenship, and inspiring hope, good cheer, and comfort where there now exists a slackening of public spirit, discontent, and, in many instances, hopelessness.

Doctors, dentists, clergymen, and other professions are in the same category with lawyers. Doctors and dentists are more directly concerned than lawyers. When we come to merchants, including all engaged in every kind of trade, we find a direct interest in good wages. It may be answered that here is an offset, because merchants must, under a high wage régime, pay good wages. But such is not the case. Merchants have absolute control of salaries for clerical hire. There is always an army waiting to escape from other avocations and enter mercantile pursuits, regardless of the pay, regardless of the hours. For this reason it has always been difficult to maintain a labor organization among store clerks.

Where, then, comes the opposition to organized labor? Who are its opposers in every effort to better its condition? They are the interests engaged in production and transportation. Some of them are building, that is, producing houses; others gold, silver, copper, iron, and other minerals; others all kinds of merchandise from ships to toothpicks; others railroad equipment; others books and newspapers; others are operating the machinery of transportation, steam railroads, street, trolley, and cable roads, and seagoing vessels.

In all these industries labor organizations can, under normal conditions, be maintained. When you come to farming, horticulture, and stock-growing, you come again to a class where organization of labor can not be maintained, because of the obstacle that distance interposes, and because often the farmer and his sons are also laborers.

Now, in the lines of industry which I have named in which organization is possible, monopolies are in control of the capital, and these charge the consumer just as high prices as they can, regardless of the wages of labor. It is true that they sometimes sell cheap, but they exploit the consumer to the uttermost, just the same. If the country will absorb a given amount of sugar at 1 cent per pound profit, but will absorb three times the same amount at one-half a cent profit, of course the lower price is the more profitable. If a railroad, though it have a monopoly, can only obtain a million bushels of wheat a year in a particular section at a transportation rate of 10 cents per bushel, but can get two millions to haul at 7 or 8 cents, of course it will reduce the rate. That is the rule of charging all the traffic will bear.

So you see that the conflict of organized labor is with organized and generally with trustified capital. To find the interest of the non-combatants in that conflict is not difficult.

ATTEMPTS TO AROUSE A PARTISAN ISSUE.

Mr. Davenport read a speech of a certain Senator named by him against antiinjunction legislation, and told the result of an election in 1903, the same year in which the speech was made. Now, I have too much respect for that Senator's character and attainments to use his name here, or the name of the State. But I might reply by calling attention to a certain large city in the United States where members of the union to the number of 15,000 organized along political lines, and, controlling 35,000 out of a total of about 65,000 votes, beat a fusion between the Republican and Democratic parties and now

ntrol every office from mayor down. They have conducted that government six years, and there never was in that city so peaceful, prosperous, or so honest an administration.

Thus the opposition befalls the issue. It makes a partisan as well as a class appeal. I wish it distinctly understood that my appeal is not to the selfishness, fears, or ambitions of anyone, except that I could arouse the laudible ambition, which I believe abides with every man not wholly depraved, to do what is fair and just between his fellow-men.

I appeal also to the fear of consequences to our nation, to result from the evil tendencies for which we seek a remedy. In a republic regression is absolutely necessary to continued national life, and passivity means national death. Moreover, I hope I would be among the last to appeal to prejudices and preconceptions in this or any other case. If I were offered a great reward for finding the man best qualified to act as a judge, where great public interests are involved, I would not seek the most learned man, but the man best able to survey his environments, political, social, economic, and commercial, and look squarely at the facts, judging fairly and impartially as to their true import. That was Robert G. Ingersoll's definition of a great man, and he said something else that I would commend to the opposition, and that was that the most important thing in the universe was a fact, and that the test of greatness was capacity to intelligently and honestly deal with facts.

The opposition assume to represent unorganized labor. Those who utter themselves that unorganized labor is not supporting the unions are doomed to a painful surprise. That conflicts sometimes occur between these forces is not due to any inherent hostility. In fact, all labor is in accord and sympathy. Whatever beliefs may exist to the contrary has arisen from exceptional instances. In this respect it is hardly the same in the labor world as in the case of political parties. That proportion of those who belong to the capitalistic and commercial class are you able to actively enlist for service in either the Republican or Democratic party? How many workingmen or business men are you able to enroll as members of your committees? Very few indeed. How would either party come out on election day if they had to depend for votes wholly on those who actively participate? We may talk about party organization as much as we please, if there is really no such thing in this country.

The parties are only organized on paper, and party action is simply the carrying out of the plans concocted and formulated by a few bosses and leaders in secret. Organization is merely the partial unfolding in public of these plans. The most important part of the plan—that which has to do with the keeping of secret pledges to those who finance parties—are never divulged. It is when the election is over and the successful candidates have taken their oaths of office that the curse of party rule is exemplified in its most disastrous and infamous aspect. This country is no longer industrially governed by those whom the people elect through party action, but by a healthy remorseless band outside the Government. It is governed by an impersonal king with his throne in Wall street. His ruthless and is sometimes felt but not seen in legislative halls. With wonderful cunning he selects his instruments.

When the Democrats are in power he employs lawyers who pretend to be Republicans, and when the Republicans are in power he employs lawyers who pretend to be Democrats, but who are neither the one thing nor the other, but simple tools of plutocracy. Never has a reformatory measure been proposed but they have posed as the friends of the Constitution, and the term "constitutional lawyer" may now be considered synonymous with the term "corporation lawyer." At certain restaurants in New York the waiters live well on tips without receiving a salary. So the so-called constitutional lawyer lives on tips from the financial dukes in the court of the "king of high finance." Some of them come here as representatives of citizens' alliances, employers' associations, and antiboycott clubs. They are paid by the large employers of labor, such as the railroads and trusts.

But after all, while I may not in all I say utter the true spirit of unionism, I am sure I truly represent it when I join in condemnation of every violation of law. If you desire a complete refutation of every aspersion cast upon the thousands of locals and hundreds of central unions that I represent, get the records of their meetings, get the records of your criminal courts, and institute a comparison with the rolls of membership. You will find that union men have been charged with crime less frequently than any other equal number. Their meeting rooms are schools of good citizenship and halls where lectures on peace, order, and obedience to law are oftener heard than anywhere else in this or any other country.

The record of union officers charged with responsibilities and custody of funds, often amounting to thousands and many thousands of dollars, are standing refutations of many accusations against the honesty of "labor leaders" and "walking delegates," as they are opprobriously called by their enemies. Only two, I believe, of the thousands of union officers have ever been convicted of betraying a trust, and in one of these cases, the case of Parks, in New York, who died in prison of a broken heart, it was subsequently shown that the testimony upon which he was convicted was suborned. Who are the men most prominent in the organization and what are their leading traits of character? I will read you a clipping from the New York Herald of April 22, 1906, about one of them.

John Mitchell holds the respect and confidence of the employers of labor as perhaps no other national labor leader has ever done. One point he emphasizes above all others, that the unions must abide by their contracts. "A little at a time," was his advice at a crisis. "Anything is better than nothing, and the big thing is the main thing—honor. That is all a union has." He believes that the strike should never be resorted to until conditions which are intolerable have failed of adjustment by appeals to reason, by mediation, by conciliation, or arbitration.

And there is another whom you all know, Mr. Andrew Furuseth, secretary of the Seaman's Union, recently gone to San Francisco, where help, sympathy, and sacrifice are required. Of his deep insight into industrial and even legislative and constitutional questions I need not speak to any who have the advantage of his acquaintance, and the same praises could be truthfully bestowed upon hundreds of leaders and thousands who are content to follow. And I have here a document, over the signatures of the principal officers of the American Federation of Labor. It is nothing more or less than an urgent, sympathetic, and patriotic appeal to the 2,500,000 members of the

unions within the Federation to contribute at least one day's wages to the sufferers generally of the terrible calamity at San Francisco. It is signed Samuel Gompers, president, and Frank Morrison, secretary. But many large donations were made at once from union funds without waiting for this appeal. I give one or two from a large number of such. The Bottle Blowers, with a membership of 6,000, sent \$10,000; the Washington City Typographical Union, \$500; the International Typographical Union, \$12,000, and the employees in the Government Printing Office, \$2,400. These sums were sent to the mayor of the stricken city for general distribution.

Another quality of union men is their forbearance and patience. They have striven ten years for Congressional relief from judicial oppression. Are you afraid to trust such men, even with liberty? Perish the thought. I trust you will make a favorable report on this bill at an early date.

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